



राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

वीरवार, 22 सितम्बर, 2022 / 31 भाद्रपद, 1944

हिमाचल प्रदेश सरकार

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

Shimla, the 22nd August, 2022

No. Shram (A) 3-8/2021 (Awards) L.C.—In exercise of the powers vested under section 17 (1) of the Industrial Disputes Act, 1947, the Governor, Himachal Pradesh is pleased to order the publication of awards of the following cases announced by the Presiding Officer, Labour Court

Shimla on the website of the Printing & Stationery Department, Himachal Pradesh i.e. "e-Gazette".—

Sl. No	Case No.	Petitioner	Respondent	Date of Award/order
1.	Ref. 02/2018	Sh. Shankar Dass	G.M. Kashang Hydro Electric Project HPPCL.	01-06-2022
2.	Ref. 03/2018	Sh. Ranjeet Singh	G.M. Kashang Hydro Electric Project HPPCL.	01-06-2022
3.	Ref. 04/2018	Sh. Kailash	G.M. Kashang Hydro Electric Project HPPCL.	01-06-2022
4.	Ref. 05/2018	Sh. Nek Chand	G.M. Kashang Hydro Electric Project HPPCL.	01-06-2022
5.	Ref. 06/2018	Sh. Kishore Kumar	G.M. Kashang Hydro Electric Project HPPCL.	01-06-2022
6.	Ref. 07/2018	Sh. Bajan Dass	G.M. Kashang Hydro Electric Project HPPCL.	01-06-2022
7.	Ref. 08/2018	Chhering Giachoo	G.M. Kashang Hydro Electric Project HPPCL.	01-06-2022
8.	Ref. 09/2018	Sh. Dev Raj	G.M. Kashang Hydro Electric Project HPPCL.	01-06-2022
9.	Ref. 21/2018	Ms. Sanya Kumar	G.M. Kashang Hydro Electric Project HPPCL.	01-06-2022
10.	Ref. 22/2018	Sh. Dharam Prakash	G.M. Kashang Hydro Electric Project HPPCL.	01-06-2022
11.	Ref. 32/2018	Sh. Nirmal Singh	G.M. Kashang Hydro Electric Project HPPCL.	01-06-2022
12.	Ref. 33/2018	Sh. Kapil Dev	G.M. Kashang Hydro Electric Project HPPCL.	01-06-2022
13.	Ref. 53/2018	Sh. Prem Chand	G.M. Kashang Hydro Electric Project HPPCL.	01-06-2022
14.	Ref. 54/2018	Sh. Desh Raj	G.M. Kashang Hydro Electric Project HPPCL.	01-06-2022
15.	Ref. 63/2018	Ms. Shiksha Devi	G.M. Kashang Hydro Electric Project HPPCL.	01-06-2022
16.	Ref. 09/2019	Sh. Man Singh	M/s Torrent Pharmaceuticals	01-06-2022
17.	Ref. 110/2019	Sh. Sarvjeet	Secy. Kali Bari Temple, Shimla	01-06-2022
18.	Ref. 111/2019	Sh. Pardeep Kumar	Secy. Kali Bari Temple, Shimla	01-06-2022
19.	Ref. 112/2019	Sh. Vijay Kumar	Secy. Kali Bari Temple, Shimla	01-06-2022
20.	Ref. 125/2021	Smt. Poonam	M/s Gini & Jony Ltd.	01-06-2022
21.	Ref. 174/2018	Sh. Pankaj Sharma	Registrar Bahara University	01-06-2022
22.	Ref. 140/2021	Ms. Neha Verma	Green Vally Institute of Beauty	01-06-2022
23.	App. 140/2019	Sh. Vinod Kumar	Mahadev Pharmaceuticals, Parwanoo	01-06-2022
24.	Ref. 15/2021	Sh. Alam	M/s Quixotic Health Care Baddi	01-06-2022
25.	Ref. 18/2021	Sh. Chaman Lal	M/s Quixotic Health Care Baddi	01-06-2022
26.	Ref. 130/2021	Sh. Saleem	M/s Quixotic Health Care Baddi	01-06-2022
27.	Ref. 133/2021	Sh. Mahinder Singh	M/s Quixotic Health Care Baddi	01-06-2022

28.	Ref. 134/2021	Sh. Veer Chand	M/s Quixotic Health Care Baddi	01-06-2022
29.	Ref. 03/2022	Sh. Ramesh	M/s Quixotic Health Care Baddi	01-06-2022
30.	Ref. 57/2022	Rahul Chaudhary	M/s Quixotic Health Care Baddi	01-06-2022
31.	Ref. 10/2020	Sh. Jagmal	Akron India	01-06-2022
32.	Ref. 87/2017	Workers Union	M/s Gowthami Hydro Electric (P) Ltd.	03-06-2022
33.	Ref. 124/2018	Kumari Suman	M/s Gowthami Hydro Electric (P) Ltd.	03-06-2022
34.	Ref. 125/2018	Sh. Raj Kumar	M/s Gowthami Hydro Electric (P) Ltd.	03-06-2022
35.	Ref. 126/2018	Sh. Trilok Kumar	M/s Gowthami Hydro Electric (P) Ltd.	03-06-2022
36.	Ref. 127/2018	Sh. Narinder Kumar	M/s Gowthami Hydro Electric (P) Ltd.	03-06-2022
37.	Ref. 149/2020	Ghanshyam Sharma	Registrar APG University Shimla	03-06-2022
38.	App. 91/2018	Sh. Narender Singh	Factory Manger, Ultra Tech.	08-06-2022
39.	App. 92/2018	Sh. Vipin Kumar	Factory Manager, Ultra Tech.	08-06-2022
40.	App. 93/2018	Sh. Vipin Kishore	Factory Manager, Ultra Tech.	08-06-2022
41.	App. 94/2018	Sh. Charan Dass	Factory Manager, Ultra Tech.	08-06-2022
42.	App. 95/2018	Sh. Lucky	Factory Manager, Ultra Tech.	08-06-2022

By order,

AKSHAY SOOD, IAS
Secretary (Lab. & Emp.).

**IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 02 of 2018

Instituted on : 30-12-2017

Decided on : 01-06-2022

Shankar Dass s/o Shri Suni Lal r/o Village and Post Office Pangri, Tehsil Kalpa, District Kinnaur, H.P. .Petitioner.

VERSUS

1. The General Manager, Kashang Hydro Electric Project, HPPCL, Knifed Building, IKHP, Reckong Peo, District Kinnaur, H.P.

2. Praveen Kumar, Contractor, VPO Pangri, Tehsil Kalpa, District Kinnaur, H.P.

3. Bharat Lal, Contractor, VPO Pangri, Tehsil Kalpa, District Kinnaur, H.P.. Respondents.

Reference petition under section 10 of the Industrial Disputes Act

For the Petitioner : Shri Vinod Sharma, Adv.

For the Respondent No.1	: Shri Manoj Chauhan, Adv.
For the Respondent No.2	: Ex-parte.
For the Respondent No.3	: Shri Arvind Negi, Adv.

AWARD

The following reference petition has been, received from the Appropriate Government, *vide* notification dated 31-10-2017, under section 10 of the Industrial Disputes Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, which reads as under:

“Whether termination of services of Shri Shankar Dass s/o Shri Suni Lal, r/o Village and Post Office, Pangti, Tehsil Kalpa, District Kinnaur, H.P by (i) Praveen Kumar, Contractor, VPO Pangti, Tehsil Kalpa, District Kinnaur, H.P. (ii) Bharat Lal Contractor, VPO Pangti, Tehsil Kalpa, District Kinnaur, H.P. (iii) The General Manager, Kashang Hydro Electric Project, HPPCL, Knifed Building, IKHP, Reckong Peo, District Kinnaur, H.P. (Principal Employer) *w.e.f.* 1-7-2016 without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. To the fore, Shri Shankar Dass (hereinafter to be referred as the petitioner) has instituted the claim petition against the General Manager, Kashang Hydro Electric Project, HPPCL (**hereinafter to be referred as respondent No. 1**), Shri Praveen Kumar Contractor (**hereinafter to be referred as the respondent No. 2**) and Shri Bharat Lal, Contractor (**hereinafter to be referred as the respondent No. 3**) under the provisions of the Act.

3. Key facts necessary for the disposal of the present reference petition are thus that the petitioner was engaged as supervisor for six years *w.e.f.* 8-7-2010 and remained posted as such till 29-6-2016. On 30-6-2016, the respondent company has illegally and without any notice has terminated the services of the petitioner. The oral termination of the services of the petitioner lead him to approach the respondents for his re-engagement into services but to no avail. Along-with the petitioner the services of eleven supervisors and two chowkidars have also been terminated. Earlier also on 19-8-2010, the services of the petitioner and eleven others workers were terminated and with the intervention of the Deputy Commissioner, Kinnaur their services were retained on 19-8-2010.

4. It is further averred that the respondents by colorable exercise of powers have terminated the services of the petitioner in gross violation of the provisions of sections 25-F, 25-G and 25-H of the Act. The respondent No.1 being model employer cannot be expected to act in the manner and fashion in which they have dealt with the case of the petitioner. Due to the acts of omission and commission on the part of the respondents, the right to livelihood of the petitioner has been taken away, which is highly illegal and bad in the eyes of law. The right of life under Article 21 of the Constitution of India is being snatched by the respondent by resorting to illegal means. The petitioner has raised demand notice and served the same upon the respondent.

5. The following prayer clause has been appended, in the footnote of the petition, which reads as under:

“In view of the aforementioned submissions, it is most respectfully prayed that present petition may kindly be allowed with the following relief(s):

- (i) The respondent company may kindly be directed to re-engage the petitioner in service as supervisor at the same place where he was working prior to his oral illegal termination.
- (ii) The respondent may kindly be directed to grant all consequential benefits to the petitioner such as seniority, arrears of back-wages etc.”

6. The lis was resisted and contested by respondent No.1 by filing written reply wherein preliminary objections of maintainability and the petitioner is contract employee engaged by the respondent company have been raised.

7. On merits, it is submitted that the services of the petitioner were engaged for specific time period through contractors to whom work order for providing manpower service in the project was awarded for a specific period throughout the year. The work order was awarded for outsourcing various job/works including data entry/attending/serving in the field and office. The onus to engage the workers lies on the contractors. The answering respondent has nothing to do with the employment of the petitioner. The petitioner was the employee of contractor and deployed with HPPCL on outsource basis through contractor. The requirement of data entry/attending/security services from the local contractor had shrunk in the year 2016 due to completion of construction work of Kashang Hydro Electric Project Stage-1. The services of the petitioner along-with other eleven workers were not terminated by the respondent company, however, their services were hired by M/s HPPCL on contract basis. It is therefore prayed that in view of the submission made hereinabove, the claim petition of the petitioner may kindly be dismissed in the interest of law and justice and justice be done.

8. The respondent No. 2 *i.e.* Shri Praveen Kumar, Contractor has been duly served in accordance with law but he has failed to appear before this Court, hence, vide order dated 10-7-2018, he was proceeded against ex-parte.

9. Reply on behalf of respondent No. 3 was filed wherein preliminary objections qua the petitioner not come to the Court with clean hand and maintainability have been taken. On merits, it is submitted that the workman has never been engaged by the respondent No. 3, hence, there is no question of illegal termination of the services of the petitioner *w.e.f.* 30-6-2016. It is therefore prayed that the petition may kindly be dismissed.

10. While filing rejoinder, the petitioner controverted the averments made thereto in the replies filed by respondent No.1 and 3, and reaffirmed and reiterated those in the petition.

11. On elucidating the pleading of parties, the following issues were struck down for its final determination *vide* Court order dated 30-05-2019:—

1. Whether the termination of the petitioner is violative of the provisions of section 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 as alleged. If so, to what relief the petitioner is entitled to? . . .*OPP.*
2. Whether the reference is not maintainable as alleged. If so its effects thereto? . . .*OPR.*
3. Whether the services of the petitioner was hired through a contractor and he was not the employee of respondent No.1 as alleged. If so its effect thereto? . . .*OPR.*
4. Relief

12. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

13. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

14. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue No.1	Yes. Entitled to lump sum compensation of ₹ 70,000/-. (₹ Seventy Thousand only)
Issue No. 2	No.
Issue No. 3	Yes.
Relief.	Reference is answered in affirmative, as per operative part of award.

REASONS FOR FINDINGS

Issues No.1 to 3 :

15. All these issues are intermingled and inter connected, as mutually existed and required the common appreciation of evidence, being taken up together for the purpose of their determination and adjudication.

16. To substantiate his case, the petitioner namely Shri Shankar Dass appeared into the witness dock as (PW-1) to depose that he was engaged as supervisor on 7-7-2010 in project run by respondent No.1 at Reckong Peo. He continued as such till 30-8-2016 and his services were dispensed with after 30-6-2016 orally without issuing any notice. He approached the respondent for his reengagement but they refused to give him any work. After his illegal termination, six persons had been engaged by the respondent as attendants. The respondent had also engaged electricians and other tradesmen. Earlier in 2010, the respondent had terminated their services and they had been re-engaged after the respondents entered into an agreement with the representatives of the village in the presence of the Deputy Commissioner vide Mark P-1. Their land also been acquired for the project and as such he fall under the category of beneficiaries and the respondent had illegally terminated his services. He prayed that he be re-engaged with all consequential benefits including back-wages. He has placed on record the detail of the outsourced manpower as received under RTI Act, Mark A-2 and the application made by the 14 terminated workers in the year 2010 Mark A-3.

17. In cross-examination, on behalf of respondent No.1, he admitted that initially he was not engaged with the respondent No.1. He further admitted that he was not issued any appointment letter by respondent No.1 nor any I card was issued by them. He denied that he was never working with the HPPCL and he had been engaged through a contractor. He admitted that his name is not reflected in (PW-2/A). He admitted that he have no documents to show that his attendance was marked with the HPPCL. He denied that he was an employee of respondent No.3. He also admitted that he has not placed on record anything to show that he was a beneficiary. When cross-examined on behalf of respondent No. 3, he admitted that he was working with respondent No. 3 and he was engaged by respondent No. 3. He further admitted that the respondent No. 3 had never engaged

him. He also admitted that his services were terminated by respondent No. 1. He admitted that his salary was paid by respondent No. 3.

18. Shri Lobha Singh, Clerk in the office of Deputy Commissioner, Kinnaur has appeared into the witness box as (PW-2) and proved on record agreement (PW-2/A). In cross-examination on behalf of respondent No. 1, he admitted that (PW-2/A) does not reflect that the petitioner was privy to the terms of the agreement and his name is not reflected in (PW-2/A). When cross-examined on behalf of respondent No. 3, he admitted that the name of the contractor is also not mentioned in (PW-2/A) nor it bears his signatures.

19. PW-3 Shri Man Chand, President of Kashang Pariyojna Prabhavit Sabha, Village Pangi has deposed that the agreement entered between the HPPCL and the representatives of Pariyojna Prabhavit Sabha, Village Pangi was in respect of 14 workers terminated by the HPPCL which included the petitioner and (PW-2/A) bears his signatures as the President of the Sabha. In cross-examination on behalf of respondent No. 1, he admitted that (PW-2/A) does not bears the name of the petitioner. He denied that the HPCL had re-engaged the petitioner after the agreement.

20. In order to rebut, the respondent No. 1 examined one Shri Mahender Kumar, General Manager, Civil as (RW-1), who tendered in evidence his affidavit (RW-1/A) wherein he reiterated almost all the averments as made in the reply. He also tendered into evidence letter dated 31-3-2008 (RW-1/B), tender dated 31-3-2008 (RW-1/C), letter dated 7-11-2008 (RW-1/D), work order dated 1-1-2008 (RW-1/E), conditions (RW-1/F), work order dated 27-12-2008 (RW-1/G), conditions (RW-1/H), letter dated 2-3-2009 (RW-1/J), work order dated 2-3-2009 (RW-1/K), conditions (RW-1/L), work order dated 31-3-2009 (RW-1/M), conditions (RW-1/N), letter dated 1-12-2009 (RW-1/O), check list (RW-1/P), work order dated 1-12-2009 (RW-1/Q), conditions (RW-1/R), letter dated 30-9-2011 (RW-1/S), work order dated 30-9-2011 (RW-1/T), conditions (RW-1/U), letter dated 27-5-2014 (RW-1/V), work order dated 19-9-2011 (RW-1/W), letter dated 13-3-2011 (RW-1/X), letter dated 20-9-2012 (RW-1/Y), work order dated 20-9-2012 (RW-1/Z), letter dated 31-12-2012 (RW-1/AA), work order dated 31-12-2012 (RW-1/AB), letter dated 22-9-2014 (RW-1/AC), letter dated 30-3-2015 (RW-1/AD), work order dated 30-3-2015 (RW-1/AE), letter dated 31-3-2016 (RW-1/AF), work order dated 31-3-2016 (RW-1/AG), letter dated 11-5-2016 (RW-1/AH), work order dated 11-5-2016 (RW-1/AJ), work order dated 31-3-2016 (RW-1/AK) and work order dated 31-3-2016 (RW-1/AL).

21. In cross-examination, on behalf of petitioner he denied that the petitioner worked as supervisor in their project. He denied that the petitioner was terminated in the year 2010. He admitted that there was a compromise effected between the parties before the Deputy Commissioner, Kinnaur on 7-7-2010 that the services of the petitioner shall be reinstated. He admitted that the land of the petitioner was acquired for setting up of the project. He denied that the petitioner had filed complaint to them for not deducting the EPF. When cross-examined on behalf of respondent No. 3, he admitted that the petitioners were working with the respondent since 2010. He further admitted that as per the work orders the nature of work is computer operator.

22. Shri Arvind Negi, Advocate for respondent No. 3 *vide* his separate statement dated 23-3-2022 has stated that he does not want to lead any evidence *i.e.* oral and documentary on behalf of the respondent No. 3.

23. This is the entire oral as well as documentary evidence led from the side of the parties.

24. Shri Vinod Sharma, Learned counsel for the petitioner has contended with all vehemence that the petitioner was engaged as supervisor by respondent No.1 in the year 2010 and his services were illegally terminated by the respondent No. 1 by an oral dismissal order in the year

2016. Along-with the petitioner as many as eleven other supervisors and two chowkidars were also terminated. The matter was reconciled and with the intervention of the Deputy Commissioner, Kinnaur, their services were re-engaged. He has also argued that the termination of the services of the petitioner is in violation of the salient provision of the Act as well as Articles 14, 16 and 21 of the Constitution of India.

25. *Per contra*, Shri Manoj Chauhan, Ld. Counsel for the respondent No. 1 argued that there exists no employee-employer relationship between petitioner and respondent No. 1. He further argued that the petitioner was never engaged by the respondent No. 1 and no appointment letter has been issued to him and even no identity card has been placed on record by him. The petitioner has also failed to place on record the statement of account showing the salary allegedly to be paid by respondent No. 1. No documentary proof showing the contribution towards EPF and ESI has been placed on record. The petitioner has alleged that he was engaged as supervisor by the respondent No. 1, whereas the work order has been issued for data entry operator. The petitioner was the employee of the contractor, who deputed the petitioner with HPPCL. He prayed that the claim petition may kindly be dismissed.

26. Shri Arvind Negi, Ld. Counsel for the respondent No. 3, has contended that the petitioner neither pleaded nor proved on record that he was engaged by respondent No. 3. As a matter of fact, the petitioner was engaged by HPPCL. The petitioner has miserably failed to prove that he was the employee of respondent No. 3. He also prayed for the dismissal of the claim petition.

27. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the petitioner, as well Learned Counsel for the respondents No. 1 & 3 and have also scrutinized the entire case record with minute care, caution and circumspection.

28. Admittedly, the petitioner by way of placing on record oral and documentary proof had tried to established on record to prove that the petitioner has been engaged and working with the respondent No. 1 till the time of his termination. The respondent No. 1 *i.e.* Kashang Hydro Electric Project under HPPCL had engaged the services of the petitioner who worked there for six years *i.e.* 2010 to 2016. However, the petitioner himself deposed that Kashang Hydroelectric Project had engaged his services, in the very opening line of his cross-examination. According to him he was engaged by HPPCL. The respondent No. 1 had issued the work orders inviting the job through contractors. However, the petitioner again twisted the fact by deposing that he was working with respondent No.1 and engaged by him. He has also admitted that there were many contractors registered with HPPCL.

29. As a matter of fact, the present reference has been sent by the appropriate government qua the termination of the services of the petitioner by the respondents No.1 to 3 w.e.f. 1-7-2016, without complying with the provisions of the Act, the petitioner having been engaged as a supervisor by the principal employer i.e Kashang Hydro Electric Project, HPPCL through the contractors, on outsource basis namely Shri Praveen Kumar and Bharat Lal contractors (Respondents No. 2 & 3). Thus, it is abundantly clear on record that the matter in controversy has been narrowed down in a short compass that whether the respondent No. 1, being principal employer had followed the basic and cardinal principles envisaged under the Act while terminating the services of the petitioner or not? It has been specifically pleaded from the side of the respondent no.1 that the petitioner had been engaged for a specific time period through the contractor to which the allocation of work order has been issued for providing the manpower service in the Project, being awarded for a specific period throughout the year. As a matter of fact, the work order for outsourcing various works including data entry is awarded in the beginning of any financial year considering the various service by flouting short term notice with the prior approval of the

competent authority. The services of the petitioner were also outsourced through local contractors, who deployed the petitioner as per requirement, as such, the onus to deploying the manpower lies with the contractor/agency as per the terms and conditions of the contract. Initially, the petitioner was an employee of the contractor and was deployed with HPPCL on outsource basis. In fact, the petitioner has also admitted in his cross-examination that his services were not at all engaged by Kashang Hydro Electric Project or HPPCL. Though, he has tried to improve his version by stating that he was engaged and terminated by respondent No. 1 but it is merely an afterthought expression and cannot replace the earlier version as deposed by him in his cross-examination.

30. Verily, much stress has been placed on record from the side of the petitioner to the agreement (PW-2/A), executed between the parties *i.e.* the representatives of HPPCL, the representatives Pariyojna Prabhavit Sabha, Village Pangi (effected community) before the Deputy Commissioner, Kinnaur on 7-7-2010 wherein it has been amicably agreed by all the concerned parties that 14 workers terminated by M/s HPPCL shall be provided livelihood by HPPCL till they got employment through HPPCL or some other agency. Seven new recruitments from Pangi village shall be done through M/s HCC Ltd., within 0-7 days from the date of call off strike subject to permission by the Hon'ble High Court. It is contended before me that the petitioner and eleven other workers were terminated by the respondent No. 1 and with the intervention of Deputy Commissioner, Kinnaur, their services were restored on 19-8-2010 and a compromise was effected. Though, the petitioner has miserably failed to establish on record that initially he was engaged by respondent No.1 *i.e.* HPPCL. Neither any appointment letter nor any termination letter has been placed on record. From the recital of the agreement dated 7-7-2010, executed before the Deputy Commissioner, Kinnaur. There was an agreement executed between the parties that the representatives of Project effected members shall be provided the livelihood by HPPCL. Such a recital shall not give any right to the petitioner that he was engaged/appointed by respondent No.1. More so, the recital of agreement (PW-2/A) dated 7-7-2010, shall not come in any way to substantiate the plea raised from the side of the petitioner. The initial burden lies on the petitioner to prove that he was not engaged by the contractors but by HPPCL.

31. Now, the question which arises for determination before this Tribunal that what relevancy, authenticity and legality attached to the writing dated 7-7-2010 (PW-2/A). All the recital made thereto in such writing amounts to a stop gap arrangement whereby it was resolved by the representatives of all the parties concerned to reconcile the matter. However, providing of livelihood by the respondent No. 1 to the workers, who were terminated by outsourcing agency/contractor, shall providing or offering any appointment/engagement to the petitioner with the respondent No. 1. It is quite apparent on the face of the record that the petitioner was not engaged by the respondent No. 1 directly rather he was engaged on outsource basis through contractor.

32. The next question arise before me that whether the termination of the services of the petitioner *w.e.f.* 1-7-2016, is violative of the provisions of the Act. Amongst arraying both the contractors, as the contesting respondents, one of them while contesting the claim petition averred that the petitioner has neither been engaged by the replying respondent nor terminated his services. The petitioner was engaged by the respondent No.1. No legal or vested rights of the petitioner have been infringed by the respondent No. 3 in any manner. However, the petitioner as (PW-1) during cross-examination by respondent No. 3 admitted that he was working with respondent No. 1 and he was engaged by respondent No. 1. He was not engaged by respondent No. 3. Both the contractors are not known to him personally. He has not claimed any particular relief against contractors. All his service conditions were being maintained and supervised by respondent No. 1. All the contentions raised at bar are devoid of merits. In my humble opinion, the petitioner miserably failed to lead any cogent, clear and clinching evidence to establish on record that he was engaged by respondent No. 1. In any case, the petitioner has also failed to produce on record any documentary

proof regarding his engagement, oral termination, service conditions and over all supervision and control by respondent No. 1. Mere oral deposition in the absence of any cogent documentary proof assumes no significance in the eyes of law. Furthermore, the averments made thereto in the reply filed by respondent No.1 are fully corroborated by the respondent No. 1 witness Shri Mahender Kumar General Manager, Civil, HPPCL (RW-1), wherein he has categorically stated that the entire dues to the petitioner is shown to have been paid by the respondent. The petitioner was never engaged by respondent No. 1 in any field of work/job at any point of time. The services of the petitioner were engaged on outsource basis through the contractor to whom the respondent No.1 has awarded the work orders from time to time. The petitioner was the employee of contractor and deployed with HPPCL, on outsource through contractors. Undoubtedly, there was an agreement executed before the Deputy Commissioner, Kinnaur on 7-7-2010 whereby the representatives of project effected members, representatives of HPCL and representatives of HCCL were signatory to the said writings. Simple, on the score that the officers of the HPPCL put their signatures to the said writing shall not provide any employment/engagement to the petitioner. The respondent witness categorically admitted that the petitioner filed complaint before the Deputy Commissioner, Kinnaur. The EPF of the petitioner was deducted by the contractor. He also admitted that the agreement bears the signatures of General Manager, Deputy General Manager of HPPCL respectively being representatives of HPPCL. However, he feigned ignorance that the petitioner was engaged as operator/supervisor. He admitted that after the issuance of the work orders, the same has been accepted by the contractors. Admittedly, the respondent No. 1 being principal employer had engaged the services of the petitioner through the contractors though there is a denial on the part of the contractors. It is now fairly established that the services of the petitioner were engaged by the contractors and deployed with HPPCL. It is also admitted position on record that the contractors while terminating the services of the petitioner is to comply with the requirement of the law. The very action on the part of the respondents while terminating the services of the petitioner has to fall within the four corners of the definition of “retrenchment” as envisaged under section 2-oo (bb) of the Act, hence, the termination of the services of the petitioner is held to be bad and nonest in the eyes of law. Since, the petitioner has completed the requirement of days as fixed by the Government for Tribal area, hence, he is also entitled for the protection of section 25-F of the Act. It is also admitted fact that before retrenching the services of the petitioner neither any notice had been issued nor any compensation has been paid. Therefore, in view of the above discussion, I am satisfied that the workman was terminated illegally and unjustifiably without complying with section 25-F of the Act, which provides as under:

"No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until :

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government for such authority as may be specified by the appropriate Government by notification in the Official Gazette".

33. So, in view of this enabling provision of the act, no workman employed in any industry, who has been in “continuous service” for not less than one year, can be retrenched by the employer unless he has been given one month’s notice in writing indicating the reasons for

retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25-B of the Act, which in its material part reads:

"25B. Definition of continuous service. For the purposes of this Chapter,—

- (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;*
- (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—*
 - (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—*
 - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and*
 - (ii) two hundred and forty days, in any other case...."*

34. Since, the petitioner is proved to have completed more than 180 days (as applicable in Tribal area) during the period of twelve calendar months in the preceding year from the date of his retrenchment, his services could not have been terminated unless he was served with one month's mandatory notice and paid the retrenchment compensation, as envisaged under Section 25-F of the Act. Admittedly, the provisions of Section 25-F of the Act were not followed or complied with by the respondent in the latter and spirit. The respondent did not pay the retrenchment compensation to the petitioner, nor had issued any requisite notice to the petitioner.

35. In the back-drop of aforesaid events, it is held that the termination of the petitioner was in violation of the provisions of Sections 25-B and 25-F of the Act. The termination is held to be illegal, unlawful and unjustified.

36. Now, the question arises as to what relief, the workman is entitled to? Their Lordships of Hon'ble Supreme Court in an authority reported as The Workmen of **M/s Firestone Tyre & Rubber Co. of India (Pvt.) Ltd. etc. vs. The Management & Ors. 1973 (1) SCC 813**, Hon'ble Supreme Court observed as under:

"10. In a particular case, after setting aside the order of dismissal, whether a workman should be reinstated or paid compensation is, as held by this Court in The Management of Panitole Tea Estate Vs. The workmen (1971) 1 SCC 742 within the judicial decision of a Labour Court of Tribunal."

37. Similarly, Their Lordship of Hon'ble Delhi High Court in another authority reported as Nehru Yuva Kendra Sangathan Vs. Union of India & Ors. 2000 IV AD (Delhi) 709, Hon'ble Delhi High Court dealt with the question of reinstatement and back wages and observed as under:

"The decision of the Supreme Court rendered in the 1970s and 1980s that reinstatement with back wages was the norm in cases where the termination of the services of the workman was held inoperative. The decisions rendered in the 1990s, including the decision of the Constitution Bench in the Punjab Land Development and Reclamation Corporation Ltd., Chandigarh seem to suggest that compensation in lieu of reinstatement and back wages is now the norm. In any case, since I am bound to follow the decision of the Constitution Bench, I, therefore, conclude that reinstatement is not the inevitable consequence of quashing an order of termination; compensation can be awarded in lieu of reinstatement and back wages."

38. To combat with, I am persuaded to award compensation in lieu of reinstatement and back wages to the workman.

39. Similarly, Their Lordships of Hon'ble Supreme Court in another authority reported as **M.L. Binjolkar Vs. State of Madhya Pradesh, 2005 VI (S.C.) 413**, Hon'ble Supreme Court observed in paragraph 7 as under :

"Though the High Court has not specifically dealt with the question as to what would be the appropriate quantum, keeping in view the law laid down by this Court in various cases e.g. Hindustan Motors Ltd. Vs. Tapanj Kumar Bhattacharya & Anr. (2002 (6) SCC 41), Rajendra Prasad Arya Vs. State of Bihar (200 (9) SCC 514), Sonapat Cooperative Sugar Mills Ltd. Vs. Ajit Singh (2005 (3) SCC 232), Haryana State Cooperative Land Development Bank Vs. Neelam (2005 (5) SCC 91), Manager, Reserve Bank of India, Bangalore Vs. S. Mani & Ors. (2005 (5) SCC 100) and Allahabad Jal Sansthan Vs. Daya Shankar Rai & Anr. (2005 (5) SCC 124), we do not find any scope for interference. The earlier view was that whenever there is interference with the order of termination or retirement, full back wages were the natural corollary. It has been laid down in the cases noted above that it would depend upon several factors and the court has to weigh the pros and cons of each case and to take a pragmatic view."

40. Their Lordship of Hon'ble Supreme Court in another authority reported as **U.P. State Brassware Corporation Limited and another Vs. Uday Narain Pandey, (2006) 1 SCC 479**, wherein the Hon'ble Supreme Court, observed as under:

"A Division Bench of this Court in **M.L. Binjolkar v. State of M.P. (2005) 6 SCC 224**, referring to a large number of decisions, held as under:

"The earlier view was that whenever there is interference with the order of termination or retirement, full back wages were the natural corollary. It has been laid down in the cases noted above that it would depend upon several factors and the Court has to weigh the pros and cons of each case and to take a pragmatic view."

41. In the exposition of law enumerated hereinbefore, now, I would like to examine the merits of the case.

42. In the instant case, the petitioner was engaged by the respondent No.1 through contractors. The petitioner had worked in the capacity of workman. Since, the services of the petitioner were not directly engaged by the respondent No.1, hence, the only remedy available with this Tribunal is to award compensation amount to the petitioner in lump sum amount.

43. Recent developments, particularly the trends particularly much after the year 2007 shows that grant of compensation in lieu of reinstatement has gained precedence, more particularly, where the services of the workmen have been terminated because of procedural defects. In the case

in hand too the termination is found to be illegal in view of the provisions Act, both ends of justice would thus be met, in case the petitioner is granted compensation in lieu of reinstatement thereof. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court titled as Bharat Sanchar Nigam Ltd. Vs. Bhurumal (2014) 7 SCC 177 and further reiterated lately in P. Karupaiyah (dead) through Legal Representatives Vs. General Manager, Thruuvalluvar Transport Corporation Ltd. (2018) 12 SCC 663 and Rashtrasant Tukdoji Maharaj Technical Education Samnatha, Nagpur Vs. Prashant Manikrao Kubitkar (2018) 12 SCC 294.

44. For the foregoing reasons and keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above, the petitioner is held entitled for a lump sum compensation amount of ₹ 70,000/- (₹ Seventy Thousand only) as lump sum compensation from the respondents, who are jointly and severally liable to pay the awarded amount to the petitioner. All these issues are decided accordingly.

Relief :

45. As a sequel to my above discussion and findings on issues No. 1 to 3, the claim of the petitioner succeeds and is hereby allowed and the petitioner is awarded lump sum compensation of **₹ 70,000/- (Rupees Seventy Thousand only) to the workman, to be paid by the respondents jointly and severally within two months from the date of announcement** of the award, failing which interest at the rate of 9% (nine percent) would be payable by the respondents to the workman. It is expressly made clear that apart from lump sum compensation, **the petitioner is entitled for all his legal dues i.e. gratuity, leave encashment, EPF, ESI etc.**, if any, in accordance with law. The reference is disposed off in the aforesaid terms. Let a copy of this award be communicated to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 1st day of June, 2022.

Sd/-
(RAJESH TOMER),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

**IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number	: 03 of 2018
Instituted on	: 30-12-2017
Decided on	: 01-06-2022

Ranjeet Singh s/o Shri Gyan Sukh, r/o Village and Post Office Pangri, Tehsil Kalpa, District Kinnaur, H.P. *.. Petitioner.*

VERSUS

1. The General Manager, Kashang Hydro Electric Project, HPPCL, Knifed Building, IKHP, reckon Peo, District Kinnaur, H.P.
2. Praveen Kumar, Contractor, VPO Pangi, Tehsil Kalpa, District Kinnaur, H.P.
3. Bharat Lal Contractor, VPO Pangi, Tehsil Kalpa, District Kinnaur, H.P. .*Respondents.*

Reference petition under section 10 of the Industrial Disputes Act

For the petitioner : Shri Vinod Sharma, Adv.

For the Respondent No. 1 : Shri Manoj Chauhan, Adv.

For the Respondent No. 2 : Ex-parte.

For the Respondent No. 3 : Shri Arvind Negi, Adv.

AWARD

The following reference petition has been, received from the Appropriate Government, *vide* notification dated 31-10-2017, under section 10 of the Industrial Disputes Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, as under:

“Whether termination of services of Shri Ranjeet Singh s/o Shri Gian Sukh, r/o Village and Post Office Pangi, Tehsil Kalpa, District Kinnaur, H.P. by (i) Praveen Kumar, Contractor, VPO Pangi, Tehsil Kalpa, District Kinnaur, H.P. (ii) Bharat Lal, Contractor, VPO Pangi, Tehsil Kalpa, District Kinnaur, H.P (iii) The General Manager, Kashang Hydro Electric Project, HPPCL, Knifed Building, IKHP, Reckong Peo, District Kinnaur, H.P. (Principal Employer) *w.e.f.* 1-7-2016 without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. To the fore, Shri Ranjeet Singh (hereinafter to be referred as the petitioner) has instituted the claim petition against the General Manager, Kashang Hydro Electric Project, HPPCL (**hereinafter to be referred as respondent No. 1**), Shri Praveen Kumar Contractor (**hereinafter to be referred as the respondent No. 2**) and Shri Bharat Lal, Contractor (**hereinafter to be referred as the respondent No. 3**) under the provisions of the Act.

3. Key facts necessary for the disposal of the present reference petition are thus that the petitioner was engaged as supervisor for six years *w.e.f.* 8-7-2010 and remained posted as such till 30-6-2016. On 01-07-2016, the respondent company has illegally and without any notice has terminated the services of the petitioner. The oral termination of the services of the petitioner lead him to approach the respondents for his re-engagement into services but to no avail. Along-with the petitioner the services of eleven supervisors and two chowkidars have also been terminated. Earlier also on 19-8-2010, the services of the petitioner and eleven others workers were terminated and with the intervention of the Deputy Commissioner, Kinnaur their services were retained on 19-8-2010.

4. It is further averred that the respondents by colorable exercise of powers have terminated the services of the petitioner in gross violation of the provisions of sections 25-F, 25-G and 25-H of the Act. The respondent No. 1 being model employer cannot be expected to act in the

manner and fashion in which they have dealt with the case of the petitioner. Due to the acts of omission and commission on the part of the respondents, the right to livelihood of the petitioner has been taken away, which is highly illegal and bad in the eyes of law. The right of life under Article 21 of the Constitution of India is being snatched by the respondent by resorting to illegal means. The petitioner has raised demand notice and served the same upon the respondent.

5. The following prayer clause has been appended, in the footnote of the petition, which reads as under:

“In view of the aforementioned submissions, it is most respectfully prayed that present petition may kindly be allowed with the following relief(s):

- (i) The respondent company may kindly be directed to re-engage the petitioner in service as supervisor at the same place where he was working prior to his oral illegal termination.
- (ii) The respondent may kindly be directed to grant all consequential benefits to the petitioner such as seniority, arrears of back-wages etc.”

6. The lis was resisted and contested by respondent No. 1 by filing written reply wherein preliminary objections of maintainability and the petitioner is contract employee engaged by the respondent company have been raised.

7. On merits, it is submitted that the services of the petitioner were engaged for specific time period through contractors to whom work order for providing manpower service in the project was awarded for a specific period throughout the year. The work order was awarded for outsourcing various job/works including data entry/attending/serving in the field and office. The onus to engage the workers lies on the contractors. The answering respondent has nothing to do with the employment of the petitioner. The petitioner was the employee of contractor and deployed with HPPCL on outsource basis through contractor. The requirement of data entry/attending/security services from the local contractor had shrunk in the year 2016 due to completion of construction work of Kashang Hydro Electric Project Stage-1. The services of the petitioner along-with other eleven workers were not terminated by the respondent company, however, their services were hired by M/s HPPCL on contract basis. It is therefore prayed that in view of the submission made hereinabove, the claim petition of the petitioner may kindly be dismissed in the interest of law and justice and justice be done.

8. The respondent No. 2 *i.e.* Shri Praveen Kumar, Contractor has been duly served in accordance with law but he has failed to appear before this Court, hence, *vide* order dated 10-7-2018, he was proceeded against *ex-parte*.

9. Reply on behalf of respondent No. 3 was filed wherein preliminary objections qua the petitioner not come to the Court with clean hand and maintainability have been taken. On merits, it is submitted that the workman has never been engaged by the respondent No. 3, hence, there is no question of illegal termination of the services of the petitioner *w.e.f.* 30-6-2016. It is therefore prayed that the petition may kindly be dismissed.

10. While filing rejoinder, the petitioner controverted the averments made thereto in the replies filed by respondent No.1 and 3, and reaffirmed and reiterated those in the petition.

11. On elucidating the pleading of parties, the following issues were struck down for its final determination *vide* Court order dated 30-05-2019.

1. Whether the termination of the petitioner is violative of the provisions of section 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 as alleged. If so, to what relief the petitioner is entitled to? . . . *OPP*.
2. Whether the reference is not maintainable as alleged. If so its effects thereto? . . . *OPR*.
3. Whether the services of the petitioner was hired through a contractor and he was not the employee of respondent No. 1 as alleged. If so its effect thereto? . . . *OPR*.
4. Relief

12. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

13. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

14. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue No. 1	Yes. Entitled to lump sum compensation of ₹ 70,000/-. (₹ Seventy Thousand only)
Issue No. 2	No
Issue No. 3	Yes
Relief	Reference is answered in affirmative, as per operative part of award.

Reasons for findings

Issues No.1 to 3 :

15. All these issues are intermingled and inter connected, as mutually existed and required the common appreciation of evidence, being taken up together for the purpose of their determination and adjudication.

16. To substantiate his case, the petitioner namely Shri Ranjeet Singh appeared into the witness dock as (PW-1) to depose that he was engaged as supervisor on 7-7-2010 in project run by respondent No. 1 at Reckong Peo. He continued as such till 30-6-2016 and his services were dispensed with after 30-6-2016 orally without issuing any notice. He approached the respondent for his re-engagement but they refused to give him any work. After his illegal termination, six persons had been engaged by the respondent as attendants. The respondent had also engaged electricians and other tradesmen. Earlier in 2010, the respondent had terminated their services and they had been re-engaged after the respondents entered into an agreement with the representatives of the village in the presence of the Deputy Commissioner vide Mark P-1. Their land also been acquired for the project and as such he fall under the category of beneficiaries and the respondent had illegally terminated his services. He prayed that he be re-engaged with all consequential benefits including back-wages. He has placed on record the detail of the outsourced manpower as received under RTI Act, Mark A-2 and the application made by the 14 terminated workers in the year 2010 Mark A-3.

17. In cross-examination, on behalf of respondent No.1, he admitted that initially he was not engaged with the respondent No. 1. He further admitted that he was not issued any appointment letter by respondent No.1 nor any I card was issued by them. He denied that he was never working with the HPPCL and he had been engaged through a contractor. He admitted that his name is not reflected in (PW-2/A). He admitted that he have no documents to show that his attendance was marked with the HPPCL. He denied that he was an employee of respondent No. 3. He also admitted that he has not placed on record anything to show that he was a beneficiary. When cross-examined on behalf of respondent No. 3, he admitted that he was working with respondent No. 3 and he was engaged by respondent No. 3. He further admitted that the respondent No. 3 had never engaged him. He also admitted that his services were terminated by respondent No. 1. He admitted that his salary was paid by respondent No. 3.

18. Shri Lobha Singh, Clerk in the office of Deputy Commissioner, Kinnaur has appeared into the witness box as (PW-2) and proved on record agreement (PW-2/A). In cross-examination on behalf of respondent No. 1, he admitted that (PW-2/A) does not reflect that the petitioner was privy to the terms of the agreement and his name is not reflected in (PW-2/A). When cross-examined on behalf of respondent No. 3, he admitted that the name of the contractor is also not mentioned in (PW-2/A) nor it bears his signatures.

19. PW-3 Shri Man Chand, President of Kashang Pariyojna Prabhavit Sabha, Village Pangi has deposed that the agreement entered between the HPPCL and the representatives of Pariyojna Prabhavit Sabha, Village Pangi was in respect of 14 workers terminated by the HPPCL which included the petitioner and (PW-2/A) bears his signatures as the President of the Sabha. In cross-examination on behalf of respondent No. 1, he admitted that (PW-2/A) does not bears the name of the petitioner. He denied that the HPCL had re-engaged the petitioner after the agreement.

20. In order to rebut, the respondent No. 1 examined one Shri Mahender Kumar, General Manager, Civil as (RW-1), who tendered in evidence his affidavit (RW-1/A) wherein he reiterated almost all the averments as made in the reply. He also tendered into evidence letter dated 31-3-2008 (RW-1/B), tender dated 31-3-2008 (RW-1/C), letter dated 7-11-2008 (RW-1/D), work order dated 1-1-2008 (RW-1/E), conditions (RW-1/F), work order dated 27-12-2008 (RW-1/G), conditions (RW-1/H), letter dated 2-3-2009 (RW-1/J), work order dated 2-3-2009 (RW-1/K), conditions (RW-1/L), work order dated 31-3-2009 (RW-1/M), conditions (RW-1/N), letter dated 1-12-2009 (RW-1/O), check list (RW-1/P), work order dated 1-12-2009 (RW-1/Q), conditions (RW-1/R), letter dated 30-9-2011 (RW-1/S), work order dated 30-9-2011 (RW-1/T), conditions (RW-1/U), letter dated 27-5-2014 (RW-1/V), work order dated 19-9-2011 (RW-1/W), letter dated 13-3-2011 (RW-1/X), letter dated 20-9-2012 (RW-1/Y), work order dated 20-9-2012 (RW-1/Z), letter dated 31-12-2012 (RW-1/AA), work order dated 31-12-2012 (RW-1/AB), letter dated 22-9-2014 (RW-1/AC), letter dated 30-3-2015 (RW-1/AD), work order dated 30-3-2015 (RW-1/AE), letter dated 31-3-2016 (RW-1/AF), work order dated 31-3-2016 (RW-1/AG), letter dated 11-5-2016 (RW-1/AH), work order dated 11-5-2016 (RW-1/AJ), work order dated 31-3-2016 (RW-1/AK) and work order dated 31-3-2016 (RW-1/AL).

21. In cross-examination, on behalf of petitioner he denied that the petitioner worked as supervisor in their project. He denied that the petitioner was terminated in the year, 2010. He admitted that there was a compromise effected between the parties before the Deputy Commissioner, Kinnaur on 7-7-2010 that the services of the petitioner shall be reinstated. He admitted that the land of the petitioner was acquired for setting up of the project. He denied that the petitioner had filed complaint to them for not deducting the EPF. When cross-examined on behalf of respondent No. 3, he admitted that the petitioners were working with the respondent since 2010. He further admitted that as per the work orders the nature of work is computer operator.

22. Shri Arvind Negi, Advocate for respondent No. 3 *vide* his separate statement dated 23-3-2022 has stated that he does not want to lead any evidence *i.e.* oral and documentary on behalf of the respondent No. 3.

23. This is the entire oral as well as documentary evidence led from the side of the parties.

24. Shri Vinod Sharma, Learned counsel for the petitioner has contended with all vehemence that the petitioner was engaged as supervisor by respondent No. 1 in the year 2010 and his services were illegally terminated by the respondent No. 1 by an oral dismissal order in the year 2016. Along-with the petitioner as many as eleven other supervisors and two chowkidars were also terminated. The matter was reconciled and with the intervention of the Deputy Commissioner, Kinnaur, their services were re-engaged. He has also argued that the termination of the services of the petitioner is in violation of the salient provision of the Act as well as Articles 14, 16 and 21 of the Constitution of India.

25. *Per contra*, Shri Manoj Chauhan, Ld. Counsel for the respondent No.1 argued that there exists no employee-employer relationship between petitioner and respondent No. 1. He further argued that the petitioner was never engaged by the respondent no.1 and no appointment letter has been issued to him and even no identity card has been placed on record by him. The petitioner has also failed to place on record the statement of account showing the salary allegedly to be paid by respondent No. 1. No documentary proof showing the contribution towards EPF and ESI has been placed on record. The petitioner has alleged that he was engaged as supervisor by the respondent No. 1, whereas the work order has been issued for data entry operator. The petitioner was the employee of the contractor, who deputed the petitioner with HPPCL. He prayed that the claim petition may kindly be dismissed.

26. Shri Arvind Negi, Ld. Counsel for the respondent No. 3, has contended that the petitioner neither pleaded nor proved on record that he was engaged by respondent No. 3. As a matter of fact, the petitioner was engaged by HPPCL. The petitioner has miserably failed to prove that he was the employee of respondent No. 3. He also prayed for the dismissal of the claim petition.

27. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the petitioner, as well Learned Counsel for the respondents No. 1 & 3 and have also scrutinized the entire case record with minute care, caution and circumspection.

28. Admittedly, the petitioner by way of placing on record oral and documentary proof had tried to establish on record to prove that the petitioner has been engaged and working with the respondent No.1 till the time of his termination. The respondent No.1 *i.e.* Kashang Hydro Electric Project under HPPCL had engaged the services of the petitioner who worked there for six years *i.e.* 2010 to 2016. However, the petitioner himself deposed that Kashang Hydroelectric Project had engaged his services, in the very opening line of his cross-examination. According to him he was engaged by HPPCL. The respondent No.1 had issued the work orders inviting the job through contractors. However, the petitioner again twisted the fact by deposing that he was working with respondent No.1 and engaged by him. He has also admitted that there were many contractors registered with HPPCL.

29. As a matter of fact, the present reference has been sent by the appropriate government qua the termination of the services of the petitioner by the respondents No.1 to 3 *w.e.f.* 1-7-2016, without complying with the provisions of the Act, the petitioner having been engaged as a supervisor by the principal employer *i.e.* Kashang Hydro Electric Project, HPPCL through the contractors, on outsource basis namely Shri Praveen Kumar and Bharat Lal contractors

(Respondents No. 2 & 3). Thus, it is abundantly clear on record that the matter in controversy has been narrowed down in a short compass that whether the respondent No. 1, being principal employer had followed the basic and cardinal principles envisaged under the Act while terminating the services of the petitioner or not? It has been specifically pleaded from the side of the respondent no.1 that the petitioner had been engaged for a specific time period through the contractor to which the allocation of work order has been issued for providing the manpower service in the Project, being awarded for a specific period throughout the year. As a matter of fact, the work order for outsourcing various works including data entry is awarded in the beginning of any financial year considering the various service by flouting short term notice with the prior approval of the competent authority. The services of the petitioner were also outsourced through local contractors, who deployed the petitioner as per requirement, as such, the onus to deploying the manpower lies with the contractor/agency as per the terms and conditions of the contract. Initially, the petitioner was an employee of the contractor and was deployed with HPPCL on outsource basis. In fact, the petitioner has also admitted in his cross-examination that his services were not at all engaged by Kashang Hydro Electric Project or HPPCL. Though, he has tried to improve his version by stating that he was engaged and terminated by respondent No. 1 but it is merely an afterthought expression and cannot replace the earlier version as deposed by him in his cross-examination.

30. Verily, much stress has been placed on record from the side of the petitioner to the agreement (PW-2/A), executed between the parties *i.e.* the representatives of HPPCL, the representatives Pariyojna Prabhavit Sabha, Village Pangi (effected community) before the Deputy Commissioner, Kinnaur on 7-7-2010 wherein it has been amicably agreed by all the concerned parties that 14 workers terminated by M/s HPPCL shall be provided livelihood by HPPCL till they got employment through HPPCL or some other agency. Seven new recruitments from Pangi village shall be done through M/s HCC Ltd., within 0-7 days from the date of call off strike subject to permission by the Hon'ble High Court. It is contended before me that the petitioner and eleven other workers were terminated by the respondent No.1 and with the intervention of Deputy Commissioner, Kinnaur, their services were restored on 19-8-2010 and a compromise was effected. Though, the petitioner has miserably failed to establish on record that initially he was engaged by respondent No.1 *i.e.* HPPCL. Neither any appointment letter nor any termination letter has been placed on record. From the recital of the agreement dated 7-7-2010, executed before the Deputy Commissioner, Kinnaur. There was an agreement executed between the parties that the representatives of Project effected members shall be provided the livelihood by HPPCL. Such a recital shall not give any right to the petitioner that he was engaged/appointed by respondent No. 1. More so, the recital of agreement (PW-2/A) dated 7-7-2010, shall not come in any way to substantiate the plea raised from the side of the petitioner. The initial burden lies on the petitioner to prove that he was not engaged by the contractors but by HPPCL.

31. Now, the question which arises for determination before this Tribunal that what relevancy, authenticity and legality attached to the writing dated 7-7-2010 (PW-2/A). All the recital made thereto in such writing amounts to a stop gap arrangement whereby it was resolved by the representatives of all the parties concerned to reconcile the matter. However, providing of livelihood by the respondent No.1 to the workers, who were terminated by outsourcing agency/contractor, shall providing or offering any appointment/engagement to the petitioner with the respondent No. 1. It is quite apparent on the face of the record that the petitioner was not engaged by the respondent No. 1 directly rather he was engaged on outsource basis through contractor.

32. The next question arise before me that whether the termination of the services of the petitioner *w.e.f.* 1-7-2016, is violative of the provisions of the Act. Amongst arraying both the contractors, as the contesting respondents, one of them while contesting the claim petition averred that the petitioner has neither been engaged by the replying respondent nor terminated his services. The petitioner was engaged by the respondent No. 1. No legal or vested rights of the petitioner have

been infringed by the respondent No. 3 in any manner. However, the petitioner as (PW-1) during cross-examination by respondent No. 3 admitted that he was working with respondent No. 1 and he was engaged by respondent No. 1. He was not engaged by respondent No. 3. Both the contractors are not known to him personally. He has not claimed any particular relief against contractors. All his service conditions were being maintained and supervised by respondent No. 1. All the contentions raised at bar are devoid of merits. In my humble opinion, the petitioner miserably failed to lead any cogent, clear and clinching evidence to establish on record that he was engaged by respondent No.1. In any case, the petitioner has also failed to produce on record any documentary proof regarding his engagement, oral termination, service conditions and over all supervision and control by respondent No. 1. Mere oral deposition in the absence of any cogent documentary proof assumes no significance in the eyes of law. Furthermore, the averments made thereto in the reply filed by respondent No. 1 are fully corroborated by the respondent No. 1 witness Shri Mahender Kumar General Manager, Civil, HPPCL (RW-1), wherein he has categorically stated that the entire dues to the petitioner is shown to have been paid by the respondent. The petitioner was never engaged by respondent No. 1 in any field of work/job at any point of time. The services of the petitioner were engaged on outsource basis through the contractor to whom the respondent No. 1 has awarded the work orders from time to time. The petitioner was the employee of contractor and deployed with HPPCL, on outsource through contractors. Undoubtedly, there was an agreement executed before the Deputy Commissioner, Kinnaur on 7-7-2010 whereby the representatives of project effected members, representatives of HPCL and representatives of HCCL were signatory to the said writings. Simple, on the score that the officers of the HPPCL put their signatures to the said writing shall not provide any employment/engagement to the petitioner. The respondent witness categorically admitted that the petitioner filed complaint before the Deputy Commissioner, Kinnaur. The EPF of the petitioner was deducted by the contractor. He also admitted that the agreement bears the signatures of General Manager, Deputy General Manager of HPPCL respectively being representatives of HPPCL. However, he feigned ignorance that the petitioner was engaged as operator/supervisor. He admitted that after the issuance of the work orders, the same has been accepted by the contractors. Admittedly, the respondent No.1 being principal employer had engaged the services of the petitioner through the contractors though there is a denial on the part of the contractors. It is now fairly established that the services of the petitioner were engaged by the contractors and deployed with HPPCL. It is also admitted position on record that the contractors while terminating the services of the petitioner is to comply with the requirement of the law. The very action on the part of the respondents while terminating the services of the petitioner has to fall within the four corners of the definition of "retrenchment" as envisaged under section 2-oo (bb) of the Act, hence, the termination of the services of the petitioner is held to be bad and nonest in the eyes of law. Since, the petitioner has completed the requirement of days as fixed by the Government for Tribal area, hence, he is also entitled for the protection of section 25-F of the Act. It is also admitted fact that before retrenching the services of the petitioner neither any notice had been issued nor any compensation has been paid. Therefore, in view of the above discussion, I am satisfied that the workman was terminated illegally and unjustifiably without complying with section 25-F of the Act, which provides as under:

"No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until :

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

- (c) notice in the prescribed manner is served on the appropriate Government for such authority as may be specified by the appropriate Government by notification in the Official Gazette".

33. So, in view of this enabling provision of the act, no workman employed in any industry, who has been in "continuous service" for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25-B of the Act, which in its material part reads:

"25B. Definition of continuous service. For the purposes of this Chapter,—

- (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;*
- (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—*
 - (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—*
 - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and*
 - (ii) two hundred and forty days, in any other case...."*

34. Since, the petitioner is proved to have completed more than 180 days (as applicable in Tribal area) during the period of twelve calendar months in the preceding year from the date of his retrenchment, his services could not have been terminated unless he was served with one month's mandatory notice and paid the retrenchment compensation, as envisaged under Section 25-F of the Act. Admittedly, the provisions of Section 25-F of the Act were not followed or complied with by the respondent in the latter and spirit. The respondent did not pay the retrenchment compensation to the petitioner, nor had issued any requisite notice to the petitioner.

35. In the back-drop of aforesaid events, it is held that the termination of the petitioner was in violation of the provisions of Sections 25-B and 25-F of the Act. The termination is held to be illegal, unlawful and unjustified.

36. Now, the question arises as to what relief, the workman is entitled to? Their Lordships of Hon'ble Supreme Court in an authority reported as The Workmen of M/s Firestone Tyre & Rubber Co. of India (Pvt.) Ltd. etc. vs. The Management & Ors. 1973 (1) SCC 813, Hon'ble Supreme Court observed as under:

"10. In a particular case, after setting aside the order of dismissal, whether a workman should be reinstated or paid compensation is, as held by this Court in The Management of Panitole Tea Estate Vs. The Workmen (1971) 1 SCC 742 within the judicial decision of a Labour Court of Tribunal."

37. Similarly, Their Lordship of Hon'ble Delhi High Court in another authority reported as **Nehru Yuva Kendra Sangathan Vs. Union of India & Ors. 2000 IV AD (Delhi) 709, Hon'ble Delhi High Court** dealt with the question of reinstatement and back wages and observed 28 as under:

"The decision of the Supreme Court rendered in the 1970s and 1980s that reinstatement with back wages was the norm in cases where the termination of the services of the workman was held inoperative. The decisions rendered in the 1990s, including the decision of the Constitution Bench in the Punjab Land Development and Reclamation Corporation Ltd., Chandigarh seem to suggest that compensation in lieu of reinstatement and back wages is now the norm. In any case, since I am bound to follow the decision of the Constitution Bench, I, therefore, conclude that reinstatement is not the inevitable consequence of quashing an order of termination; compensation can be awarded in lieu of reinstatement and back wages."

38. To combat with, I am persuaded to award compensation in lieu of reinstatement and back wages to the workman.

39. Similarly, Their Lordships of Hon'ble Supreme Court in another authority reported as **M.L. Binjolkar Vs. State of Madhya Pradesh, 2005 VI (S.C.) 413**, Hon'ble Supreme Court observed in paragraph 7 as under :

"Though the High Court has not specifically dealt with the question as to what would be the appropriate quantum, keeping in view the law laid down by this Court in various cases *e.g.* Hindustan Motors Ltd. *Vs.* Tapanj Kumar Bhattacharya & Anr. (2002 (6) SCC 41), Rajendra Prasad Arya *Vs.* State of Bihar (200 (9) SCC 514), Sonapat Cooperative Sugar Mills Ltd. *Vs.* Ajit Singh (2005 (3) SCC 232), Haryana State Cooperative Land Development Bank *Vs.* Neelam (2005 (5) SCC 91), Manager, Reserve Bank of India, Bangalore *Vs.* S. Mani & Ors. (2005 (5) SCC 100) and Allahabad Jal Sansthan *Vs.* Daya Shankar Rai & Anr. (2005 (5) SCC 124), we do not find any scope for interference. The earlier view was that whenever there is interference with the order of termination or retirement, full back wages were the natural corollary. It has been laid down in the cases noted above that it would depend upon several factors and the court has to weigh the pros and cons of each case and to take a pragmatic view."

40. Their Lordship of Hon'ble Supreme Court in another authority reported as **U.P. State Brassware Corporation Limited and another Vs. Uday Narain Pandey, (2006) 1 SCC 479**, wherein the Hon'ble Supreme Court, observed as under:

"A Division Bench of this Court in **M. L. Binjolkar v. State of M.P. (2005) 6 SCC 224**, referring to a large number of decisions, held as under:

"The earlier view was that whenever there is interference with the order of termination or retirement, full back wages were the natural corollary. It has been laid down in the cases noted above that it would depend upon several factors and the Court has to weigh the pros and cons of each case and to take a pragmatic view."

41. In the exposition of law enumerated hereinbefore, now, I would like to examine the merits of the case.

42. In the instant case, the petitioner was engaged by the respondent No.1 through contractors. The petitioner had worked in the capacity of workman. Since, the services of the

petitioner were not directly engaged by the respondent No.1, hence, the only remedy available with this Tribunal is to award compensation amount to the petitioner in lump sum amount.

43. Recent developments, particularly the trends particularly much after the year 2007 shows that grant of compensation in lieu of reinstatement has gained precedence, more particularly, where the services of the workmen have been terminated because of procedural defects. In the case in hand too the termination is found to be illegal in view of the provisions Act, both ends of justice would thus be met, in case the petitioner is granted compensation in lieu of reinstatement thereof. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court titled as **Bharat Sanchar Nigam Ltd. Vs. Bhurumal (2014) 7 SCC 177** and further reiterated lately in **P. Karupiah (dead) through Legal Representatives Vs. General Manager, Thruuvalluvar Transport Corporation Ltd. (2018) 12 SCC 663** and **Rashtrasant Tukdoji Maharaj Technical Education Samnsta, Nagpur Vs. Prashant Manikrao Kubitkar (2018) 12 SCC 294**.

44. For the foregoing reasons and keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above, the petitioner is held entitled for a lump sum compensation amount of ₹ 70,000/- (₹ Seventy Thousand only) as lump sum compensation from the respondents, who are jointly and severally liable to pay the awarded amount to the petitioner. All these issues are decided accordingly.

Relief:

45. As a sequel to my above discussion and findings on issues No. 1 to 3, the claim of the petitioner succeeds and is hereby allowed and the petitioner is awarded lump sum compensation of ₹ 70,000/- (**Rupees Seventy Thousand only**) to the workman, to be paid by the respondents jointly and severally within two months from the date of announcement of the award, failing which interest at the rate of 9% (nine percent) would be payable by the respondent society to the workman. It is expressly made clear that apart from lump sum compensation, **the petitioner is entitled for all his legal dues i.e. gratuity, leave encashment, EPF, ESI etc.**, admissible if any, in accordance with law. The reference is disposed off in the aforesaid terms. Let a copy of this award be communicated to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 1st day of June, 2022.

Sd/-
(RAJESH TOMER),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Reference Number : 04 of 2018
Instituted on : 30-12-2017
Decided on : 01-06-2022

Kailash s/o Shri Jaswant Singh, r/o Village and Post Office, Pangti, Tehsil Kalpa, District Kinnaur, H.P. . *Petitioner.*

VERSUS

1. The General Manager, Kashang Hydro Electric Project, HPPCL, Knifed Building, IKHP, Reckong Peo, District Kinnaur, H.P.
2. Praveen Kumar, Contractor, VPO Pangti, Tehsil Kalpa, District Kinnaur, H.P.
3. Bharat Lal Contractor, VPO Pangti, Tehsil Kalpa, District Kinnaur, H.P. . *Respondents.*

Reference petition under section 10 of the Industrial Disputes Act

For the petitioner : Shri Vinod Sharma, Adv.

For the Respondent No. 1 : Shri Manoj Chauhan, Adv.

For the Respondent No. 2 : Ex-parte.

For the Respondent No. 3 : Shri Arvind Negi, Adv.

AWARD

The following reference petition has been, received from the Appropriate Government, *vide* notification dated 31-10-2017, under section 10 of the Industrial Disputes Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, as under:

“Whether termination of services of Shri Kailash s/o Shri Jaswant Singh, r/o Village and Post Office Pangti, Tehsil Kalpa, District Kinnaur, H.P by (i) Praveen Kumar, Contractor, VPO Pangti, Tehsil Kalpa, District Kinnaur, H.P. (ii) Bharat Lal Contractor, VPO Pangti, Tehsil Kalpa, District Kinnaur, H.P. (iii) The General Manager, Kashang Hydro Electric Project, HPPCL, Knifed Building, IKHP, Reckong Peo, District Kinnaur, H.P. (Principal Employer) *w.e.f.* 1-7-2016 without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. To the fore, Shri Kailash (hereinafter to be referred as the petitioner) has instituted the claim petition against the General Manager, Kashang Hydro Electric Project, HPPCL (**hereinafter to be referred as respondent No. 1**), Shri Praveen Kumar Contractor (**hereinafter to be referred as the respondent No. 2**) and Shri Bharat Lal, Contractor (**hereinafter to be referred as the respondent No. 3**) under the provisions of the Act.

3. Key facts necessary for the disposal of the present reference petition are thus that the petitioner was engaged as supervisor for six years *w.e.f.* 8-7-2010 and remained posted as such till 30-6-2016. On 01-07-2016, the respondent company has illegally and without any notice has terminated the services of the petitioner. The oral termination of the services of the petitioner lead him to approach the respondents for his re-engagement into services but to no avail. Along-with the petitioner the services of eleven supervisors and two chowkidars have also been terminated. Earlier also on 19-8-2010, the services of the petitioner and eleven others workers were terminated and

with the intervention of the Deputy Commissioner, Kinnaur their services were retained on 19-8-2010.

4. It is further averred that the respondents by colorable exercise of powers have terminated the services of the petitioner in gross violation of the provisions of sections 25-F, 25-G and 25-H of the Act. The respondent No. 1 being model employer cannot be expected to act in the manner and fashion in which they have dealt with the case of the petitioner. Due to the acts of omission and commission on the part of the respondents, the right to livelihood of the petitioner has been taken away, which is highly illegal and bad in the eyes of law. The right of life under Article 21 of the Constitution of India is being snatched by the respondent by resorting to illegal means. The petitioner has raised demand notice and served the same upon the respondent.

5. The following prayer clause has been appended, in the footnote of the petition, which reads as under:

“In view of the aforementioned submissions, it is most respectfully prayed that present petition may kindly be allowed with the following relief(s):

- (i) The respondent company may kindly be directed to re-engage the petitioner in service as supervisor at the same place where he was working prior to his oral illegal termination.
- (ii) The respondent may kindly be directed to grant all consequential benefits to the petitioner such as seniority, arrears of back-wages etc.”

6. The lis was resisted and contested by respondent No.1 by filing written reply wherein preliminary objections of maintainability and the petitioner is contract employee engaged by the respondent company have been raised.

7. On merits, it is submitted that the services of the petitioner were engaged for specific time period through contractors to whom work order for providing manpower service in the project was awarded for a specific period throughout the year. The work order was awarded for outsourcing various job/works including data entry/attending/serving in the field and office. The onus to engage the workers lies on the contractors. The answering respondent has nothing to do with the employment of the petitioner. The petitioner was the employee of contractor and deployed with HPPCL on outsource basis through contractor. The requirement of data entry/attending/security services from the local contractor had shrunk in the year 2016 due to completion of construction work of Kashang Hydro Electric Project Stage-1. The services of the petitioner along-with other eleven workers were not terminated by the respondent company, however, their services were hired by M/s HPPCL on contract basis. It is therefore prayed that in view of the submission made hereinabove, the claim petition of the petitioner may kindly be dismissed in the interest of law and justice and justice be done.

8. The respondent No. 2 *i.e.* Shri Praveen Kumar, Contractor has been duly served in accordance with law but he has failed to appear before this Court, hence, *vide* order dated 10-7-2018, he was proceeded against ex-parte.

9. Reply on behalf of respondent No. 3 was filed wherein preliminary objections qua the petitioner not come to the Court with clean hand and maintainability have been taken. On merits, it is submitted that the workman has never been engaged by the respondent No. 3, hence, there is no question of illegal termination of the services of the petitioner *w.e.f.* 30-6-2016. It is therefore prayed that the petition may kindly be dismissed.

10. While filing rejoinder, the petitioner controverted the averments made thereto in the replies filed by respondent No.1 and 3, and reaffirmed and reiterated those in the petition.

11. On elucidating the pleading of parties, the following issues were struck down for its final determination vide Court order dated 30-05-2019 :—

1. Whether the termination of the petitioner is violative of the provisions of section 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 as alleged. If so, to what relief the petitioner is entitled to? . . .*OPP.*
2. Whether the reference is not maintainable as alleged. If so its effects thereto? . . .*OPR.*
3. Whether the services of the petitioner was hired through a contractor and he was not the employee of respondent no.1 as alleged. If so its effect thereto? . . .*OPR.*
4. Relief

12. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

13. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

14. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue No. 1	Yes. Entitled to lump sum compensation of ₹ 70,000/- (₹ Seventy Thousand only)
Issue no. 2	No
Issue No. 3	Yes
Relief	Reference is answered in affirmative, as per operative part of award.

REASONS FOR FINDINGS

Issues No.1 to 3 :

15. All these issues are intermingled and inter connected, as mutually existed and required the common appreciation of evidence, being taken up together for the purpose of their determination and adjudication.

16. To substantiate his case, the petitioner namely Shri Kailash Chand appeared into the witness dock as (PW-1) to depose that he was engaged as supervisor on 7-7-2010 in project run by respondent No. 1 at Reckong Peo. He continued as such till 30-6-2016 and his services were dispensed with after 30-6-2016 orally without issuing any notice. He approached the respondent for his re-engagement but they refused to give him any work. After his illegal termination, six persons had been engaged by the respondent as attendants. The respondent had also engaged electricians and other tradesmen. Earlier in 2010, the respondent had terminated their services and they had

been re-engaged after the respondents entered into an agreement with the representatives of the village in the presence of the Deputy Commissioner vide Mark P-1. Their land also been acquired for the project and as such he fall under the category of beneficiaries and the respondent had illegally terminated his services. He prayed that he be re-engaged with all consequential benefits including back-wages. He has placed on record the detail of the outsourced manpower as received under RTI Act, Mark A-2 and the application made by the 14 terminated workers in the year 2010 Mark A-3.

17. In cross-examination, on behalf of respondent No. 1, he admitted that initially he was not engaged with the respondent No. 1. He further admitted that he was not issued any appointment letter by respondent No. 1 nor any I card was issued by them. He denied that he was never working with the HPPCL and he had been engaged through a contractor. He admitted that his name is not reflected in (PW-2/A). He admitted that he have no documents to show that his attendance was marked with the HPPCL. He denied that he was an employee of respondent No. 3. He also admitted that he has not placed on record anything to show that he was a beneficiary. When cross-examined on behalf of respondent No. 3, he admitted that he was working with respondent No. 3 and he was engaged by respondent No. 3. He further admitted that the respondent No. 3 had never engaged him. He also admitted that his services were terminated by respondent No. 1. He admitted that his salary was paid by respondent No. 3.

18. Shri Lobha Singh, Clerk in the office of Deputy Commissioner, Kinnaur has appeared into the witness box as (PW-2) and proved on record agreement (PW-2/A). In cross-examination on behalf of respondent No. 1, he admitted that (PW-2/A) does not reflect that the petitioner was privy to the terms of the agreement and his name is not reflected in (PW-2/A). When cross-examined on behalf of respondent No. 3, he admitted that the name of the contractor is also not mentioned in (PW-2/A) nor it bears his signatures.

19. PW-3 Shri Man Chand, President of Kashang Pariyojna Prabhavit Sabha, Village Pangi has deposed that the agreement entered between the HPPCL and the representatives of Pariyojna Prabhavit Sabha, Village Pangi was in respect of 14 workers terminated by the HPPCL which included the petitioner and (PW-2/A) bears his signatures as the President of the Sabha. In cross-examination on behalf of respondent No.1, he admitted that (PW-2/A) does not bears the name of the petitioner. He denied that the HPCL had re-engaged the petitioner after the agreement.

20. In order to rebut, the respondent No. 1 examined one Shri Mahender Kumar, General Manager, Civil as (RW-1), who tendered in evidence his affidavit (RW-1/A) wherein he reiterated almost all the averments as made in the reply. He also tendered into evidence letter dated 31-3-2008 (RW-1/B), tender dated 31-3-2008 (RW-1/C), letter dated 7-11-2008 (RW-1/D), work order dated 1-1-2008 (RW-1/E), conditions (RW-1/F), work order dated 27-12-2008 (RW-1/G), conditions (RW-1/H), letter dated 2-3-2009 (RW-1/J), work order dated 2-3-2009 (RW-1/K), conditions (RW-1/L), work order dated 31-3-2009 (RW-1/M), conditions (RW-1/N), letter dated 1-12-2009 (RW-1/O), check list (RW-1/P), work order dated 1-12-2009 (RW-1/Q), conditions (RW-1/R), letter dated 30-9-2011 (RW-1/S), work order dated 30-9-2011 (RW-1/T), conditions (RW-1/U), letter dated 27-5-2014 (RW-1/V), work order dated 19-9-2011 (RW-1/W), letter dated 13-3-2011 (RW-1/X), letter dated 20-9-2012 (RW-1/Y), work order dated 20-9-2012 (RW-1/Z), letter dated 31-12-2012 (RW-1/AA), work order dated 31-12-2012 (RW-1/AB), letter dated 22-9-2014 (RW-1/AC), letter dated 30-3-2015 (RW-1/AD), work order dated 30-3-2015 (RW-1/AE), letter dated 31-3-2016 (RW-1/AF), work order dated 31-3-2016 (RW-1/AG), letter dated 11-5-2016 (RW-1/AH), work order dated 11-5-2016 (RW-1/AJ), work order dated 31-3-2016 (RW-1/AK) and work order dated 31-3-2016 (RW-1/AL).

21. In cross-examination, on behalf of petitioner he denied that the petitioner worked as supervisor in their project. He denied that the petitioner was terminated in the year, 2010. He admitted that there was a compromise effected between the parties before the Deputy Commissioner, Kinnaur on 7-7-2010 that the services of the petitioner shall be reinstated. He admitted that the land of the petitioner was acquired for setting up of the project. He denied that the petitioner had filed a complaint to them for not deducting the EPF. When cross-examined on behalf of respondent No. 3, he admitted that the petitioners were working with the respondent since 2010. He further admitted that as per the work orders the nature of work is computer operator.

22. Shri Arvind Negi, Advocate for respondent No. 3 *vide* his separate statement dated 23-3-2022 has stated that he does not want to lead any evidence *i.e.* oral and documentary on behalf of the respondent No. 3.

23. This is the entire oral as well as documentary evidence led from the side of the parties.

24. Shri Vinod Sharma, Learned counsel for the petitioner has contended with all vehemence that the petitioner was engaged as supervisor by respondent No. 1 in the year 2010 and his services were illegally terminated by the respondent No. 1 by an oral dismissal order in the year 2016. Along-with the petitioner as many as eleven other supervisors and two chowkidars were also terminated. The matter was reconciled and with the intervention of the Deputy Commissioner, Kinnaur, their services were re-engaged. He has also argued that the termination of the services of the petitioner is in violation of the salient provision of the Act as well as Articles 14, 16 and 21 of the Constitution of India.

25. *Per contra*, Shri Manoj Chauhan, Ld. Counsel for the respondent No.1 argued that there exists no employee-employer relationship between petitioner and respondent No. 1. He further argued that the petitioner was never engaged by the respondent No. 1 and no appointment letter has been issued to him and even no identity card has been placed on record by him. The petitioner has also failed to place on record the statement of account showing the salary allegedly to be paid by respondent No. 1. No documentary proof showing the contribution towards EPF and ESI has been placed on record. The petitioner has alleged that he was engaged as supervisor by the respondent No. 1, whereas the work order has been issued for data entry operator. The petitioner was the employee of the contractor, who deputed the petitioner with HPPCL. HE prayed that the claim petition may kindly be dismissed.

26. Shri Arvind Negi, Ld. Counsel for the respondent No. 3, has contended that the petitioner neither pleaded nor proved on record that he was engaged by respondent No. 3. As a matter of fact, the petitioner was engaged by HPPCL. The petitioner has miserably failed to prove that he was the employee of respondent No. 3. He also prayed for the dismissal of the claim petition.

27. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the petitioner, as well Learned Counsel for the respondents No. 1 & 3 and have also scrutinized the entire case record with minute care, caution and circumspection.

28. Admittedly, the petitioner by way of placing on record oral and documentary proof had tried to establish on record to prove that the petitioner has been engaged and working with the respondent No. 1 till the time of his termination. The respondent No.1 *i.e.* Kashang Hydro Electric Project under HPPCL had engaged the services of the petitioner who worked there for six years *i.e.* 2010 to 2016. However, the petitioner himself deposed that Kashang Hydroelectric Project had engaged his services, in the very opening line of his cross-examination. According to him he was engaged by HPPCL. The respondent No. 1 had issued the work orders inviting the job through

contractors. However, the petitioner again twisted the fact by deposing that he was working with respondent No. 1 and engaged by him. He has also admitted that there were many contractors registered with HPPCL.

29. As a matter of fact, the present reference has been sent by the appropriate government qua the termination of the services of the petitioner by the respondents No. 1 to 3 w.e.f. 1-7-2016, without complying with the provisions of the Act, the petitioner having been engaged as a supervisor by the principal employer i.e. Kashang Hydro Electric Project, HPPCL through the contractors, on outsource basis namely Shri Praveen Kumar and Bharat Lal contractors (Respondents No. 2 & 3). Thus, it is abundantly clear on record that the matter in controversy has been narrowed down in a short compass that whether the respondent No. 1, being principal employer had followed the basic and cardinal principles envisaged under the Act while terminating the services of the petitioner or not? It has been specifically pleaded from the side of the respondent No. 1 that the petitioner had been engaged for a specific time period through the contractor to which the allocation of work order has been issued for providing the manpower service in the Project, being awarded for a specific period throughout the year. As a matter of fact, the work order for outsourcing various works including data entry is awarded in the beginning of any financial year considering the various service by flouting short term notice with the prior approval of the competent authority. The services of the petitioner were also outsourced through local contractors, who deployed the petitioner as per requirement, as such, the onus to deploying the manpower lies with the contractor/agency as per the terms and conditions of the contract. Initially, the petitioner was an employee of the contractor and was deployed with HPPCL on outsource basis. In fact, the petitioner has also admitted in his cross-examination that his services were not at all engaged by Kashang Hydro Electric Project or HPPCL. Though, he has tried to improve his version by stating that he was engaged and terminated by respondent No.1 but it is merely an afterthought expression and cannot replace the earlier version as deposed by him in his cross-examination.

30. Verily, much stress has been placed on record from the side of the petitioner to the agreement (PW-2/A), executed between the parties i.e. the representatives of HPPCL, the representatives Pariyojna Prabhavit Sabha, Village Pangi (effected community) before the Deputy Commissioner, Kinnaur on 7-7-2010 wherein it has been amicably agreed by all the concerned parties that 14 workers terminated by M/s HPPCL shall be provided livelihood by HPPCL till they got employment through HPPCL or some other agency. Seven new recruitments from Pangi village shall be done through M/s HCC Ltd., within 0-7 days from the date of call off strike subject to permission by the Hon'ble High Court. It is contended before me that the petitioner and eleven other workers were terminated by the respondent No.1 and with the intervention of Deputy Commissioner, Kinnaur, their services were restored on 19-8-2010 and a compromise was effected. Though, the petitioner has miserably failed to establish on record that initially he was engaged by respondent No.1 i.e. HPPCL. Neither any appointment letter nor any termination letter has been placed on record. From the recital of the agreement dated 7-7-2010, executed before the Deputy Commissioner, Kinnaur. There was an agreement executed between the parties that the representatives of Project effected members shall be provided the livelihood by HPPCL. Such a recital shall not give any right to the petitioner that he was engaged/appointed by respondent No. 1. More so, the recital of agreement (PW-2/A) dated 7-7-2010, shall not come in any way to substantiate the plea raised from the side of the petitioner. The initial burden lies on the petitioner to prove that he was not engaged by the contractors but by HPPCL.

31. Now, the question which arises for determination before this Tribunal that what relevancy, authenticity and legality attached to the writing dated 7-7-2010 (PW-2/A). All the recital made thereto in such writing amounts to a stop gap arrangement whereby it was resolved by the representatives of all the parties concerned to reconcile the matter. However, providing of

livelihood by the respondent No. 1 to the workers, who were terminated by outsourcing agency/contractor, shall providing or offering any appointment/engagement to the petitioner with the respondent No. 1. It is quite apparent on the face of the record that the petitioner was not engaged by the respondent No. 1 directly rather he was engaged on outsource basis through contractor.

32. The next question arise before me that whether the termination of the services of the petitioner *w.e.f.* 1-7-2016, is violative of the provisions of the Act. Amongst arraying both the contractors, as the contesting respondents, one of them while contesting the claim petition averred that the petitioner has neither been engaged by the replying respondent nor terminated his services. The petitioner was engaged by the respondent No. 1. No legal or vested rights of the petitioner have been infringed by the respondent No. 3 in any manner. However, the petitioner as (PW-1) during cross-examination by respondent No. 3 admitted that he was working with respondent No. 1 and he was engaged by respondent No. 1. He was not engaged by respondent No. 3. Both the contractors are not known to him personally. He has not claimed any particular relief against contractors. All his service conditions were being maintained and supervised by respondent No. 1. All the contentions raised at bar are devoid of merits. In my humble opinion, the petitioner miserably failed to lead any cogent, clear and clinching evidence to establish on record that he was engaged by respondent No. 1. In any case, the petitioner has also failed to produce on record any documentary proof regarding his engagement, oral termination, service conditions and over all supervision and control by respondent No. 1. Mere oral deposition in the absence of any cogent documentary proof assumes no significance in the eyes of law. Furthermore, the averments made thereto in the reply filed by respondent No. 1 are fully corroborated by the respondent No. 1 witness Shri Mahender Kumar General Manager, Civil, HPPCL (RW-1), wherein he has categorically stated that the entire dues to the petitioner is shown to have been paid by the respondent. The petitioner was never engaged by respondent No.1 in any field of work/job at any point of time. The services of the petitioner were engaged on outsource basis through the contractor to whom the respondent No. 1 has awarded the work orders from time to time. The petitioner was the employee of contractor and deployed with HPPCL, on outsource through contractors. Undoubtedly, there was an agreement executed before the Deputy Commissioner, Kinnaur on 7-7-2010 whereby the representatives of project effected members, representatives of HPCL and representatives of HCCL were signatory to the said writings. Simple, on the score that the officers of the HPPCL put their signatures to the said writing shall not provide any employment/engagement to the petitioner. The respondent witness categorically admitted that the petitioner filed complaint before the Deputy Commissioner, Kinnaur. The EPF of the petitioner was deducted by the contractor. He also admitted that the agreement bears the signatures of General Manager, Deputy General Manager of HPPCL respectively being representatives of HPPCL. However, he feigned ignorance that the petitioner was engaged as operator/supervisor. He admitted that after the issuance of the work orders, the same has been accepted by the contractors. Admittedly, the respondent No.1 being principal employer had engaged the services of the petitioner through the contractors though there is a denial on the part of the contractors. It is now fairly established that the services of the petitioner were engaged by the contractors and deployed with HPPCL. It is also admitted position on record that the contractors while terminating the services of the petitioner is to comply with the requirement of the law. The very action on the part of the respondents while terminating the services of the petitioner has to fall within the four corners of the definition of “retrenchment” as envisaged under section 2-oo (bb) of the Act, hence, the termination of the services of the petitioner is held to be bad and nonest in the eyes of law. Since, the petitioner has completed the requirement of days as fixed by the Government for Tribal area, hence, he is also entitled for the protection of section 25-F of the Act. It is also admitted fact that before retrenching the services of the petitioner neither any notice had been issued nor any compensation has been paid. Therefore, in view of the above discussion, I am satisfied that the workman was terminated illegally and unjustifiably without complying with section 25-F of the Act, which provides as under:

"No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until :

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government for such authority as may be specified by the appropriate Government by notification in the Official Gazette".

33. So, in view of this enabling provision of the act, no workman employed in any industry, who has been in "continuous service" for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25-B of the Act, which in its material part reads:

"25B. Definition of continuous service. For the purposes of this Chapter,—

- (1) *a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;*
- (2) *where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—*
 - (a) *for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—*
 - (i) *one hundred and ninety days in the case of a workman employed below ground in a mine; and*
 - (ii) *two hundred and forty days, in any other case...."*

34. Since, the petitioner is proved to have completed more than 180 days (as applicable in Tribal area) during the period of twelve calendar months in the preceding year from the date of his retrenchment, his services could not have been terminated unless he was served with one month's mandatory notice and paid the retrenchment compensation, as envisaged under Section 25-F of the Act. Admittedly, the provisions of Section 25-F of the Act were not followed or complied with by the respondent in the latter and spirit. The respondent did not pay the retrenchment compensation to the petitioner, nor had issued any requisite notice to the petitioner.

35. In the back-drop of aforesaid events, it is held that the termination of the petitioner was in violation of the provisions of Sections 25-B and 25-F of the Act. The termination is held to be illegal, unlawful and unjustified.

36. Now, the question arises as to what relief, the workman is entitled to? Their Lordships of Hon'ble Supreme Court in an authority reported as The Workmen of **M/s Firestone Tyre & Rubber Co. of India (Pvt.) Ltd. etc. vs. The Management & Ors. 1973 (1) SCC 813**, Hon'ble Supreme Court observed as under:

"10. In a particular case, after setting aside the order of dismissal, whether a workman should be reinstated or paid compensation is, as held by this Court in *The Management of Panitole Tea Estate Vs. The workmen* (1971) 1 SCC 742 within the judicial decision of a Labour Court of Tribunal."

37. Similarly, Their Lordship of Hon'ble Delhi High Court in another authority reported as **Nehru Yuva Kendra Sangathan Vs. Union of India & Ors. 2000 IV AD (Delhi) 709, Hon'ble Delhi High Court** dealt with the question of reinstatement and back wages and observed as under:

"The decision of the Supreme Court rendered in the 1970s and 1980s that reinstatement with back wages was the norm in cases where the termination of the services of the workman was held inoperative. The decisions rendered in the 1990s, including the decision of the Constitution Bench in the Punjab Land Development and Reclamation Corporation Ltd., Chandigarh seem to suggest that compensation in lieu of reinstatement and back wages is now the norm. In any case, since I am bound to follow the decision of the Constitution Bench, I, therefore, conclude that reinstatement is not the inevitable consequence of quashing an order of termination; compensation can be awarded in lieu of reinstatement and back wages."

38. To combat with, I am persuaded to award compensation in lieu of reinstatement and back wages to the workman.

39. Similarly, Their Lordships of Hon'ble Supreme Court in another authority reported as **M.L. Binjolkar Vs. State of Madhya Pradesh, 2005 VI (S.C.) 413**, Hon'ble Supreme Court observed in paragraph 7 as under :

"Though the High Court has not specifically dealt with the question as to what would be the appropriate quantum, keeping in view the law laid down by this Court in various cases e.g. *Hindustan Motors Ltd. Vs. Tapanj Kumar Bhattacharya & Anr.* (2002 (6) SCC 41), *Rajendra Prasad Arya Vs. State of Bihar* (200 (9) SCC 514), *Sonepat Cooperative Sugar Mills Ltd. Vs. Ajit Singh* (2005 (3) SCC 232), *Haryana State Cooperative Land Development Bank Vs. Neelam* (2005 (5) SCC 91), *Manager, Reserve Bank of India, Bangalore Vs. S. Mani & Ors.* (2005 (5) SCC 100) and *Allahabad Jal Sansthan Vs. Daya Shankar Rai & Anr.* (2005 (5) SCC 124), we do not find any scope for interference. The earlier view was that whenever there is interference with the order of termination or retirement, full back wages were the natural corollary. It has been laid down in the cases noted above that it would depend upon several factors and the court has to weigh the pros and cons of each case and to take a pragmatic view."

40. Their Lordship of Hon'ble Supreme Court in another authority reported as **U.P. State Brassware Corporation Limited and another Vs. Uday Narain Pandey, (2006) 1 SCC 479**, wherein the Hon'ble Supreme Court, observed as under:

"A Division Bench of this Court in **M.L. Binjolkar v. State of M.P. (2005) 6 SCC 224**, referring to a large number of decisions, held as under:

"The earlier view was that whenever there is interference with the order of termination or retirement, full back wages were the natural corollary. It has been laid down in the cases noted above that it would depend upon several factors and the Court has to weigh the pros and cons of each case and to take a pragmatic view."

41. In the exposition of law enumerated hereinbefore, now, I would like to examine the merits of the case.

42. In the instant case, the petitioner was engaged by the respondent No.1 through contractors. The petitioner had worked in the capacity of workman. Since, the services of the petitioner were not directly engaged by the respondent No.1, hence, the only remedy available with this Tribunal is to award compensation amount to the petitioner in lump sum amount.

43. Recent developments, particularly the trends particularly much after the year 2007 shows that grant of compensation in lieu of reinstatement has gained precedence, more particularly, where the services of the workmen have been terminated because of procedural defects. In the case in hand too the termination is found to be illegal in view of the provisions Act, both ends of justice would thus be met, in case the petitioner is granted compensation in lieu of reinstatement thereof. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court titled as **Bharat Sanchar Nigam Ltd. Vs. Bhurumal (2014) 7 SCC 177** and further reiterated lately in **P. Karupaiah (dead) through Legal Representatives Vs. General Manager, Thruuvalluvar Transport Corporation Ltd. (2018) 12 SCC 663** and **Rashtrasant Tukdoji Maharaj Technical Education Samnatha, Nagpur Vs. Prashant Manikrao Kubitkar (2018) 12 SCC 294**.

44. For the foregoing reasons and keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above, the petitioner is held entitled for a lump sum compensation amount of ₹ 70,000/- (₹ Seventy Thousand only) as lump sum compensation from the respondents, who are jointly and severally liable to pay the awarded amount to the petitioner. All these issues are decided accordingly.

Relief :

45. As a sequel to my above discussion and findings on issues No.1 to 3, the claim of the petitioner succeeds and is hereby allowed and the petitioner is awarded lump sum compensation of **₹ 70,000/- (Rupees Seventy Thousand only) to the workman, to be paid by the respondents jointly and severally within two months from the date of announcement** of the award, failing which interest at the rate of 9% (nine percent) would be payable by the respondents to the workman. It is expressly made clear that apart from lump sum compensation, **the petitioner is entitled for all his legal dues i.e. gratuity, leave encashment, EPF, ESI etc.**, admissible if any, in accordance with law. The reference is disposed off in the aforesaid terms. Let a copy of this award be communicated to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 1st day of June, 2022.

Sd/-
(RAJESH TOMER),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

**IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 05 of 2018

Instituted on : 30-12-2017

Decided on : 01-06-2022

Nek Chand s/o Shri Him Chand, r/o Village and Post Office, Pangi, Tehsil Kalpa, District Kinnaur, H.P. .*Petitioner.*

VERSUS

1. The General Manager, Kashang Hydro Electric Project, HPPCL, Knifed Building, IKHP, Reckong Peo, District Kinnaur, H.P.

2. Praveen Kumar, Contractor, VPO Pangi, Tehsil Kalpa, District Kinnaur, H.P.

3. Bharat Lal Contractor, VPO Pangi, Tehsil Kalpa, District Kinnaur, H.P. .*Respondents.*

Reference petition under section 10 of the Industrial Disputes Act

For the petitioner : Shri Vinod Sharma, Adv.

For the Respondent No. 1 : Shri Manoj Chauhan, Adv.

For the Respondent No. 2 : Ex-parte.

For the Respondent No. 3 : Shri Arvind Negi, Adv.

AWARD

The following reference petition has been, received from the Appropriate Government, *vide* notification dated 31-10-2017, under section 10 of the Industrial Disputes Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, as under:

“Whether termination of services of Shri Nek Chand s/o Shri Him Chand, r/o Village and Post Office Pangi, Tehsil Kalpa, District Kinnaur, H.P by (i) Praveen Kumar, Contractor, VPO Pangi, Tehsil Kalpa, District Kinnaur, H.P. (ii) Bharat Lal Contractor, VPO Pangi, Tehsil Kalpa, District Kinnaur, H.P. (iii) The General Manager, Kashang Hydro Electric Project, HPPCL, Knifed Building, IKHP, Reckong Peo, District Kinnaur, H.P. (Principal Employer) *w.e.f.* 1-7-2016 without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. To the fore, Shri Nek Chand (hereinafter to be referred as the petitioner) has instituted the claim petition against the General Manager, Kashang Hydro Electric Project, HPPCL (**hereinafter to be referred as respondent No.1**), Shri Praveen Kumar Contractor (**hereinafter to**

be referred as the respondent No.2) and Shri Bharat Lal, Contractor (**hereinafter to be referred as the respondent no.3)** under the provisions of the Act.

3. Key facts necessary for the disposal of the present reference petition are thus that the petitioner was engaged as supervisor for six years *w.e.f.* 8-7-2010 and remained posted as such till 30-6-2016. On 01-07-2016, the respondent company has illegally and without any notice has terminated the services of the petitioner. The oral termination of the services of the petitioner lead him to approach the respondents for his re-engagement into services but to no avail. Along-with the petitioner the services of eleven supervisors and two chowkidars have also been terminated. Earlier also on 19-8-2010, the services of the petitioner and eleven others workers were terminated and with the intervention of the Deputy Commissioner, Kinnaur their services were retained on 19-8-2010.

4. It is further averred that the respondents by colorable exercise of powers have terminated the services of the petitioner in gross violation of the provisions of sections 25-F, 25-G and 25-H of the Act. The respondent No. 1 being model employer cannot be expected to act in the manner and fashion in which they have dealt with the case of the petitioner. Due to the acts of omission and commission on the part of the respondents, the right to livelihood of the petitioner has been taken away, which is highly illegal and bad in the eyes of law. The right of life under Article 21 of the Constitution of India is being snatched by the respondent by resorting to illegal means. The petitioner has raised demand notice and served the same upon the respondent.

5. The following prayer clause has been appended, in the footnote of the petition, which reads as under:

“In view of the aforementioned submissions, it is most respectfully prayed that present petition may kindly be allowed with the following relief(s):

- (i) The respondent company may kindly be directed to re-engage the petitioner in service as supervisor at the same place where he was working prior to his oral illegal termination.
- (ii) The respondent may kindly be directed to grant all consequential benefits to the petitioner such as seniority, arrears of back-wages etc.”

6. The lis was resisted and contested by respondent No.1 by filing written reply wherein preliminary objections of maintainability and the petitioner is contract employee engaged by the respondent company have been raised.

7. On merits, it is submitted that the services of the petitioner were engaged for specific time period through contractors to whom work order for providing manpower service in the project was awarded for a specific period throughout the year. The work order was awarded for outsourcing various job/works including data entry/attending/serving in the field and office. The onus to engage the workers lies on the contractors. The answering respondent has nothing to do with the employment of the petitioner. The petitioner was the employee of contractor and deployed with HPPCL on outsource basis through contractor. The requirement of data entry/attending/security services from the local contractor had shrunk in the year 2016 due to completion of construction work of Kashang Hydro Electric Project Stage-1. The services of the petitioner along-with other eleven workers were not terminated by the respondent company, however, their services were hired by M/s HPPCL on contract basis. It is therefore prayed that in view of the submission made hereinabove, the claim petition of the petitioner may kindly be dismissed in the interest of law and justice and justice be done.

8. The respondent No. 2 *i.e.* Shri Praveen Kumar, Contractor has been duly served in accordance with law but he has failed to appear before this Court, hence, vide order dated 10-7-2018, he was proceeded against ex-parte.

9. Reply on behalf of respondent No. 3 was filed wherein preliminary objections qua the petitioner not come to the Court with clean hand and maintainability have been taken. On merits, it is submitted that the workman has never been engaged by the respondent No. 3, hence, there is no question of illegal termination of the services of the petitioner *w.e.f.* 30-6-2016. It is therefore prayed that the petition may kindly be dismissed.

10. While filing rejoinder, the petitioner controverted the averments made thereto in the replies filed by respondent No.1 and 3, and reaffirmed and reiterated those in the petition.

11. On elucidating the pleading of parties, the following issues were struck down for its final determination *vide* Court order dated 30-05-2019.

1. Whether the termination of the petitioner is violative of the provisions of section 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 as alleged. If so, to what relief the petitioner is entitled to? . . .*OPP.*
2. Whether the reference is not maintainable as alleged. If so its effects thereto? . . .*OPR.*
3. Whether the services of the petitioner was hired through a contractor and he was not the employee of respondent no.1 as alleged. If so its effect thereto? . . .*OPR.*
4. Relief

12. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

13. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

14. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue no.1	Yes. Entitled to lump sum compensation of ₹ 70,000/- (₹ Seventy Thousand only).
Issue No. 2	No
Issue No.3	Yes
Relief.	Reference is answered in affirmative, as per operative part of award.

Reasons for findings

Issues No.1 to 3:

15. All these issues are intermingled and inter connected, as mutually existed and required the common appreciation of evidence, being taken up together for the purpose of their determination and adjudication.

16. To substantiate his case, the petitioner namely Shri Nek Chand appeared into the witness dock as (PW-1) to depose that he was engaged as supervisor on 7-7-2010 in project run by respondent No. 1 at Reckong Peo. He continued as such till 30-6-2016 and his services were dispensed with after 30-6-2016 orally without issuing any notice. He approached the respondent for his re-engagement but they refused to give him any work. After his illegal termination, six persons had been engaged by the respondent as attendants. The respondent had also engaged electricians and other tradesmen. Earlier in 2010, the respondent had terminated their services and they had been re-engaged after the respondents entered into an agreement with the representatives of the village in the presence of the Deputy Commissioner vide Mark P-1. Their land also been acquired for the project and as such he fall under the category of beneficiaries and the respondent had illegally terminated his services. He prayed that he be re-engaged with all consequential benefits including back-wages. He has placed on record the detail of the outsourced manpower as received under RTI Act, Mark A-2 and the application made by the 14 terminated workers in the year 2010 Mark A-3.

17. In cross-examination, on behalf of respondent No. 1, he admitted that initially he was not engaged with the respondent No. 1. He further admitted that he was not issued any appointment letter by respondent No. 1 nor any I card was issued by them. He denied that he was never working with the HPPCL and he had been engaged through a contractor. He admitted that his name is not reflected in (PW-2/A). He admitted that he have no documents to show that his attendance was marked with the HPPCL. He denied that he was an employee of respondent No. 3. He also admitted that he has not placed on record anything to show that he was a beneficiary. When cross-examined on behalf of respondent No. 3, he admitted that he was working with respondent No. 3 and he was engaged by respondent No. 3. He further admitted that the respondent No. 3 had never engaged him. He also admitted that his services were terminated by respondent No. 1. He admitted that his salary was paid by respondent No. 3.

18. Shri Lobha Singh, Clerk in the office of Deputy Commissioner, Kinnaur has appeared into the witness box as (PW-2) and proved on record agreement (PW-2/A). In cross-examination on behalf of respondent No. 1, he admitted that (PW-2/A) does not reflect that the petitioner was privy to the terms of the agreement and his name is not reflected in (PW-2/A). When cross-examined on behalf of respondent No. 3, he admitted that the name of the contractor is also not mentioned in (PW-2/A) nor it bears his signatures.

19. PW-3 Shri Man Chand, President of Kashang Pariyojna Prabhavit Sabha, Village Pangi has deposed that the agreement entered between the HPPCL and the representatives of Pariyojna Prabhavit Sabha, Village Pangi was in respect of 14 workers terminated by the HPPCL which included the petitioner and (PW-2/A) bears his signatures as the President of the Sabha. In cross-examination on behalf of respondent No.1, he admitted that (PW-2/A) does not bears the name of the petitioner. He denied that the HPCL had re-engaged the petitioner after the agreement.

20. In order to rebut, the respondent No. 1 examined one Shri Mahender Kumar, General Manager, Civil as (RW-1), who tendered in evidence his affidavit (RW-1/A) wherein he reiterated almost all the averments as made in the reply. He also tendered into evidence letter dated 31-3-2008 (RW-1/B), tender dated 31-3-2008 (RW-1/C), letter dated 7-11-2008 (RW-1/D), work order dated 1-1-2008 (RW-1/E), conditions (RW-1/F), work order dated 27-12-2008 (RW-1/G), conditions (RW-1/H), letter dated 2-3-2009 (RW-1/J), work order dated 2-3-2009 (RW-1/K), conditions (RW-1/L), work order dated 31-3-2009 (RW-1/M), conditions (RW-1/N), letter dated 1-12-2009 (RW-1/O), check list (RW-1/P), work order dated 1-12-2009 (RW-1/Q), conditions (RW-1/R), letter dated 30-9-2011 (RW-1/S), work order dated 30-9-2011 (RW-1/T), conditions (RW-1/U), letter dated 27-5-2014 (RW-1/V), work order dated 19-9-2011 (RW-1/W), letter dated 13-3-2011 (RW-1/X), letter dated 20-9-2012 (RW-1/Y), work order dated 20-9-2012 (RW-1/Z),

letter dated 31-12-2012 (RW-1/AA), work order dated 31-12-2012 (RW-1/AB), letter dated 22-9-2014 (RW-1/AC), letter dated 30-3-2015 (RW-1/AD), work order dated 30-3-2015 (RW-1/AE), letter dated 31-3-2016 (RW-1/AF), work order dated 31-3-2016 (RW-1/AG, letter dated 11.5.2016 (RW-1/AH), work order dated 11-5-2016 (RW-1/AJ), work order dated 31-3-2016 (RW-1/AK) and work order dated 31-3-2016 (RW-1/AL).

21. In cross-examination, on behalf of petitioner he denied that the petitioner worked as supervisor in their project. He denied that the petitioner was terminated in the year 2010. He admitted that there was a compromise effected between the parties before the Deputy Commissioner, Kinnaur on 7-7-2010 that the services of the petitioner shall be reinstated. He admitted that the land of the petitioner was acquired for setting up of the project. He denied that the petitioner had filed complaint to them for not deducting the EPF. When cross-examined on behalf of respondent No. 3, he admitted that the petitioners were working with the respondent since 2010. He further admitted that as per the work orders the nature of work is computer operator.

22. Shri Arvind Negi, Advocate for respondent No. 3 *vide* his separate statement dated 23-3-2022 has stated that he does not want to lead any evidence *i.e.* oral and documentary on behalf of the respondent No. 3.

23. This is the entire oral as well as documentary evidence led from the side of the parties.

24. Shri Vinod Sharma, Learned counsel for the petitioner has contended with all vehemence that the petitioner was engaged as supervisor by respondent no.1 in the year 2010 and his services were illegally terminated by the respondent No. 1 by an oral dismissal order in the year 2016. Along-with the petitioner as many as eleven other supervisors and two chowkidars were also terminated. The matter was reconciled and with the intervention of the Deputy Commissioner, Kinnaur, their services were re-engaged. He has also argued that the termination of the services of the petitioner is in violation of the salient provision of the Act as well as Articles 14, 16 and 21 of the Constitution of India.

25. *Per contra*, Shri Manoj Chauhan, Ld. Counsel for the respondent No. 1 argued that there exists no employee-employer relationship between petitioner and respondent No. 1. He further argued that the petitioner was never engaged by the respondent No.1 and no appointment letter has been issued to him and even no identity card has been placed on record by him. The petitioner has also failed to place on record the statement of account showing the salary allegedly to be paid by respondent No. 1. No documentary proof showing the contribution towards EPF and ESI has been placed on record. The petitioner has alleged that he was engaged as supervisor by the respondent No. 1, whereas the work order has been issued for data entry operator. The petitioner was the employee of the contractor, who deputed the petitioner with HPPCL. He prayed that the claim petition may kindly be dismissed.

26. Shri Arvind Negi, Ld. Counsel for the respondent No. 3, has contended that the petitioner neither pleaded nor proved on record that he was engaged by respondent No. 3. As a matter of fact, the petitioner was engaged by HPPCL. The petitioner has miserably failed to prove that he was the employee of respondent No. 3. He also prayed for the dismissal of the claim petition.

27. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the petitioner, as well Learned Counsel for the respondents No. 1 & 3 and have also scrutinized the entire case record with minute care, caution and circumspection.

28. Admittedly, the petitioner by way of placing on record oral and documentary proof had tried to establish on record to prove that the petitioner has been engaged and working with the respondent No. 1 till the time of his termination. The respondent No. 1 *i.e.* Kashang Hydro Electric Project under HPPCL had engaged the services of the petitioner who worked there for six years *i.e.* 2010 to 2016. However, the petitioner himself deposed that Kashang Hydroelectric Project had engaged his services, in the very opening line of his cross-examination. According to him he was engaged by HPPCL. The respondent No. 1 had issued the work orders inviting the job through contractors. However, the petitioner again twisted the fact by deposing that he was working with respondent No. 1 and engaged by him. He has also admitted that there were many contractors registered with HPPCL.

29. As a matter of fact, the present reference has been sent by the appropriate government qua the termination of the services of the petitioner by the respondents No. 1 to 3 w.e.f. 1-7-2016, without complying with the provisions of the Act, the petitioner having been engaged as a supervisor by the principal employer *i.e.* Kashang Hydro Electric Project, HPPCL through the contractors, on outsource basis namely Shri Praveen Kumar and Bharat Lal contractors (Respondents No. 2 & 3). Thus, it is abundantly clear on record that the matter in controversy has been narrowed down in a short compass that whether the respondent No. 1, being principal employer had followed the basic and cardinal principles envisaged under the Act while terminating the services of the petitioner or not? It has been specifically pleaded from the side of the respondent No. 1 that the petitioner had been engaged for a specific time period through the contractor to which the allocation of work order has been issued for providing the manpower service in the Project, being awarded for a specific period throughout the year. As a matter of fact, the work order for outsourcing various works including data entry is awarded in the beginning of any financial year considering the various service by flouting short term notice with the prior approval of the competent authority. The services of the petitioner were also outsourced through local contractors, who deployed the petitioner as per requirement, as such, the onus to deploying the manpower lies with the contractor/agency as per the terms and conditions of the contract. Initially, the petitioner was an employee of the contractor and was deployed with HPPCL on outsource basis. In fact, the petitioner has also admitted in his cross-examination that his services were not at all engaged by Kashang Hydro Electric Project or HPPCL. Though, he has tried to improve his version by stating that he was engaged and terminated by respondent No. 1 but it is merely an afterthought expression and cannot replace the earlier version as deposed by him in his cross-examination.

30. Verily, much stress has been placed on record from the side of the petitioner to the agreement (PW-2/A), executed between the parties *i.e.* the representatives of HPPCL, the representatives Pariyojna Prabhavit Sabha, Village Pangi (affected community) before the Deputy Commissioner, Kinnaur on 7-7-2010 wherein it has been amicably agreed by all the concerned parties that 14 workers terminated by M/s HPPCL shall be provided livelihood by HPPCL till they got employment through HPPCL or some other agency. Seven new recruitments from Pangi village shall be done through M/s HCC Ltd., within 0-7 days from the date of call off strike subject to permission by the Hon'ble High Court. It is contended before me that the petitioner and eleven other workers were terminated by the respondent No. 1 and with the intervention of Deputy Commissioner, Kinnaur, their services were restored on 19-8-2010 and a compromise was effected. Though, the petitioner has miserably failed to establish on record that initially he was engaged by respondent No. 1 *i.e.* HPPCL. Neither any appointment letter nor any termination letter has been placed on record. From the recital of the agreement dated 7-7-2010, executed before the Deputy Commissioner, Kinnaur. There was an agreement executed between the parties that the representatives of Project affected members shall be provided the livelihood by HPPCL. Such a recital shall not give any right to the petitioner that he was engaged/appointed by respondent No. 1. More so, the recital of agreement (PW-2/A) dated 7-7-2010, shall not come in any way to substantiate the plea raised from the side of the petitioner. The initial burden lies on the petitioner to prove that he was not engaged by the contractors but by HPPCL.

31. Now, the question which arises for determination before this Tribunal that what relevancy, authenticity and legality attached to the writing dated 7-7-2010 (PW-2/A). All the recital made thereto in such writing amounts to a stop gap arrangement whereby it was resolved by the representatives of all the parties concerned to reconcile the matter. However, providing of livelihood by the respondent No. 1 to the workers, who were terminated by outsourcing agency/contractor, shall providing or offering any appointment/engagement to the petitioner with the respondent No. 1. It is quite apparent on the face of the record that the petitioner was not engaged by the respondent No. 1 directly rather he was engaged on outsource basis through contractor.

32. The next question arise before me that whether the termination of the services of the petitioner *w.e.f.* 1-7-2016, is violative of the provisions of the Act. Amongst arraying both the contractors, as the contesting respondents, one of them while contesting the claim petition averred that the petitioner has neither been engaged by the replying respondent nor terminated his services. The petitioner was engaged by the respondent No. 1. No legal or vested rights of the petitioner have been infringed by the respondent No. 3 in any manner. However, the petitioner as (PW-1) during cross-examination by respondent No. 3 admitted that he was working with respondent No. 1 and he was engaged by respondent No. 1. He was not engaged by respondent No. 3. Both the contractors are not known to him personally. He has not claimed any particular relief against contractors. All his service conditions were being maintained and supervised by respondent No. 1. All the contentions raised at bar are devoid of merits. In my humble opinion, the petitioner miserably failed to lead any cogent, clear and clinching evidence to establish on record that he was engaged by respondent No. 1. In any case, the petitioner has also failed to produce on record any documentary proof regarding his engagement, oral termination, service conditions and over all supervision and control by respondent No. 1. Mere oral deposition in the absence of any cogent documentary proof assumes no significance in the eyes of law. Furthermore, the averments made thereto in the reply filed by respondent No. 1 are fully corroborated by the respondent No. 1 witness Shri Mahender Kumar General Manager, Civil, HPPCL (RW-1), wherein he has categorically stated that the entire dues to the petitioner is shown to have been paid by the respondent. The petitioner was never engaged by respondent No. 1 in any field of work/job at any point of time. The services of the petitioner were engaged on outsource basis through the contractor to whom the respondent No. 1 has awarded the work orders from time to time. The petitioner was the employee of contractor and deployed with HPPCL, on outsource through contractors. Undoubtedly, there was an agreement executed before the Deputy Commissioner, Kinnaur on 7-7-2010 whereby the representatives of project effected members, representatives of HPCL and representatives of HCCL were signatory to the said writings. Simple, on the score that the officers of the HPPCL put their signatures to the said writing shall not provide any employment/engagement to the petitioner. The respondent witness categorically admitted that the petitioner filed complaint before the Deputy Commissioner, Kinnaur. The EPF of the petitioner was deducted by the contractor. He also admitted that the agreement bears the signatures of General Manager, Deputy General Manager of HPPCL respectively being representatives of HPPCL. However, he feigned ignorance that the petitioner was engaged as operator/supervisor. He admitted that after the issuance of the work orders, the same has been accepted by the contractors. Admittedly, the respondent No. 1 being principal employer had engaged the services of the petitioner through the contractors though there is a denial on the part of the contractors. It is now fairly established that the services of the petitioner were engaged by the contractors and deployed with HPPCL. It is also admitted position on record that the contractors while terminating the services of the petitioner is to comply with the requirement of the law. The very action on the part of the respondents while terminating the services of the petitioner has to fall within the four corners of the definition of "retrenchment" as envisaged under section 2-oo (bb) of the Act, hence, the termination of the services of the petitioner is held to be bad and nonest in the eyes of law. Since, the petitioner has completed the requirement of days as fixed by the Government for Tribal area, hence, he is also entitled for the protection of section 25-F of the Act. It is also admitted fact that before retrenching the services of the petitioner neither any

notice had been issued nor any compensation has been paid. Therefore, in view of the above discussion, I am satisfied that the workman was terminated illegally and unjustifiably without complying with section 25-F of the Act, which provides as under:

"No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until :

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government for such authority as may be specified by the appropriate Government by notification in the Official Gazette".

33. So, in view of this enabling provision of the act, no workman employed in any industry, who has been in "continuous service" for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25-B of the Act, which in its material part reads:

"25B. Definition of continuous service. For the purposes of this Chapter,—

- (1) *a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;*
- (2) *where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—*
 - (a) *for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—*
 - (i) *one hundred and ninety days in the case of a workman employed below ground in a mine; and*
 - (ii) *two hundred and forty days, in any other case...."*

34. Since, the petitioner is proved to have completed more than 180 days (as applicable in Tribal area) during the period of twelve calendar months in the preceding year from the date of his retrenchment, his services could not have been terminated unless he was served with one month's mandatory notice and paid the retrenchment compensation, as envisaged under Section 25-F of the Act. Admittedly, the provisions of Section 25-F of the Act were not followed or complied with by

the respondent in the latter and spirit. The respondent did not pay the retrenchment compensation to the petitioner, nor had issued any requisite notice to the petitioner.

35. In the back-drop of aforesaid events, it is held that the termination of the petitioner was in violation of the provisions of Sections 25-B and 25-F of the Act. The termination is held to be illegal, unlawful and unjustified.

36. Now, the question arises as to what relief, the workman is entitled to? Their Lordships of Hon'ble Supreme Court in an authority reported as The Workmen of **M/s Firestone Tyre & Rubber Co. of India (Pvt.) Ltd. etc. vs. The Management & Ors. 1973 (1) SCC 813**, Hon'ble Supreme Court observed as under:

"10. In a particular case, after setting aside the order of dismissal, whether a workman should be reinstated or paid compensation is, as held by this Court in The Management of Panitole Tea Estate Vs. The workmen (1971) 1 SCC 742 within the judicial decision of a Labour Court of Tribunal."

37. Similarly, Their Lordship of Hon'ble Delhi High Court in another authority reported as **Nehru Yuva Kendra Sangathan Vs. Union of India & Ors. 2000 IV AD (Delhi) 709**, Hon'ble **Delhi High Court** dealt with the question of reinstatement and back wages and observed as under:

"The decision of the Supreme Court rendered in the 1970s and 1980s that reinstatement with back wages was the norm in cases where the termination of the services of the workman was held inoperative. The decisions rendered in the 1990s, including the decision of the Constitution Bench in the Punjab Land Development and Reclamation Corporation Ltd., Chandigarh seem to suggest that compensation in lieu of reinstatement and back wages is now the norm. In any case, since I am bound to follow the decision of the Constitution Bench, I, therefore, conclude that reinstatement is not the inevitable consequence of quashing an order of termination; compensation can be awarded in lieu of reinstatement and back wages."

38. To combat with, I am persuaded to award compensation in lieu of reinstatement and back wages to the workman.

39. Similarly, Their Lordships of Hon'ble Supreme Court in another authority reported as **M.L. Binjolkar Vs. State of Madhya Pradesh, 2005 VI (S.C.) 413**, Hon'ble Supreme Court observed in paragraph 7 as under :

"Though the High Court has not specifically dealt with the question as to what would be the appropriate quantum, keeping in view the law laid down by this Court in various cases e.g. Hindustan Motors Ltd. Vs. Tapanj Kumar Bhattarcharya & Anr. (2002 (6) SCC 41), Rajendra Prasad Arya Vs. State of Bihar (200 (9) SCC 514), Sonepat Cooperative Sugar Mills Ltd. Vs. Ajit Singh (2005 (3) SCC 232), Haryana State Cooperative Land Development Bank Vs. Neelam (2005 (5) SCC 91), Manager, Reserve Bank of India, Bangalore Vs. S. Mani & Ors. (2005 (5) SCC 100) and Allahabad Jal Sansthan Vs. Daya Shankar Rai & Anr. (2005 (5) SCC 124), we do not find any scope for interference. The earlier view was that whenever there is interference with the order of termination or retirement, full back wages were the natural corollary. It has been laid down in the cases noted above that it would depend upon several factors and the court has to weigh the pros and cons of each case and to take a pragmatic view."

40. Their Lordship of Hon'ble Supreme Court in another authority reported as **U.P. State Brassware Corporation Limited and another Vs. Uday Narain Pandey, (2006) 1 SCC 479**, wherein the Hon'ble Supreme Court, observed as under:

“A Division Bench of this Court in **M.L. Binjolkar v. State of M.P. (2005) 6 SCC 224**, referring to a large number of decisions, held as under:

“The earlier view was that whenever there is interference with the order of termination or retirement, full back wages were the natural corollary. It has been laid down in the cases noted above that it would depend upon several factors and the Court has to weigh the pros and cons of each case and to take a pragmatic view.”

41. In the exposition of law enumerated hereinbefore, now, I would like to examine the merits of the case.

42. In the instant case, the petitioner was engaged by the respondent No. 1 through contractors. The petitioner had worked in the capacity of workman. Since, the services of the petitioner were not directly engaged by the respondent No. 1, hence, the only remedy available with this Tribunal is to award compensation amount to the petitioner in lump sum amount.

43. Recent developments, particularly the trends particularly much after the year 2007 shows that grant of compensation in lieu of reinstatement has gained precedence, more particularly, where the services of the workmen have been terminated because of procedural defects. In the case in hand too the termination is found to be illegal in view of the provisions Act, both ends of justice would thus be met, in case the petitioner is granted compensation in lieu of reinstatement thereof. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court titled as **Bharat Sanchar Nigam Ltd. Vs. Bhurumal (2014) 7 SCC 177** and further reiterated lately in **P. Karupaiyah (dead) through Legal Representatives Vs. General Manager, Thruuvalluvar Transport Corporation Ltd. (2018) 12 SCC 663** and **Rashtrasant Tukdoji Maharaj Technical Education Samnatha, Nagpur Vs. Prashant Manikrao Kubitkar (2018) 12 SCC 294**.

44. For the foregoing reasons and keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above, the petitioner is held entitled for a lump sum compensation amount of ₹ 70,000/- (₹ Seventy Thousand only) as lump sum compensation from the respondents, who are jointly and severally liable to pay the awarded amount to the petitioner. All these issues are decided accordingly.

Relief :

45. As a sequel to my above discussion and findings on issues No. 1 to 3, the claim of the petitioner succeeds and is hereby allowed and the petitioner is awarded lump sum compensation of ₹ 70,000/- (**Rupees Seventy Thousand only**) to the workman, to be paid by the respondents jointly and severally within two months from the date of announcement of the award, failing which interest at the rate of 9% (nine percent) would be payable by the respondents to the workman. It is expressly made clear that apart from lump sum compensation, **the petitioner is entitled for all his legal dues i.e. gratuity, leave encashment, EPF, ESI etc.**, admissible if any, in accordance with law. The reference is disposed off in the aforesaid terms. Let a copy of this award be communicated to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 1st day of June, 2022.

Sd/-
(RAJESH TOMER),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

**IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 06 of 2018

Instituted on : 30-12-2018

Decided on : 01-06-2022

Kishore Kumar s/o Shri Sunam Guru r/o Village and Post Office, Pangti, Tehsil Kalpa, District Kinnaur, H.P.

VERSUS

1. The General Manager, Kashang Hydro Electric Project, HPPCL, Knifed Building, IKHP, Reckong Peo, District Kinnaur, H.P.
2. Praveen Kumar, Contractor, VPO Pangti, Tehsil Kalpa, District Kinnaur, H.P.
3. Bharat Lal Contractor, VPO Pangti, Tehsil Kalpa, District Kinnaur, H.P. . *Respondents.*

Reference petition under section 10 of the Industrial Disputes Act

For the petitioner : Shri Vinod Sharma, Adv.

For the Respondent No. 1 : Shri Manoj Chauhan, Adv.

For the Respondent No. 2 : Ex-parte.

For the Respondent No. 3 : Shri Arvind Negi, Adve.

AWARD

The following reference petition has been, received from the Appropriate Government, *vide* notification dated 31-10-2017, under section 10 of the Industrial Disputes Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, as under:

“Whether termination of services of Shri Kishore Kumar s/o Shri Sunam Guru, r/o Village and Post Office, Pangti, Tehsil Kalpa, District Kinnaur, H.P by (i) Praveen Kumar, Contractor, VPO Pangti, Tehsil Kalpa, District Kinnaur, H.P. (ii) Bharat Lal Contractor, VPO Pangti, Tehsil Kalpa, District Kinnaur, H.P. (iii) The General Manager, Kashang Hydro Electric Project, HPPCL, Knifed Building, IKHP, Reckong Peo, District Kinnaur,

H.P (Principal Employer) *w.e.f.* 1-7-2016 without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

2. To the fore, Shri Kishore Kumar (hereinafter to be referred as the petitioner) has instituted the claim petition against the General Manager, Kashang Hydro Electric Project, HPPCL (**hereinafter to be referred as respondent No. 1**), Shri Praveen Kumar Contractor (**hereinafter to be referred as the respondent No. 2**) and Shri Bharat Lal, Contractor (**hereinafter to be referred as the respondent No. 3**) under the provisions of the Act.

3. Key facts necessary for the disposal of the present reference petition are thus that the petitioner was engaged as supervisor for six years *w.e.f.* 8-7-2010 and remained posted as such till 30-6-2016. On 01-07-2016, the respondent company has illegally and without any notice has terminated the services of the petitioner. The oral termination of the services of the petitioner lead him to approach the respondents for his re-engagement into services but to no avail. Along-with the petitioner the services of eleven supervisors and two chowkidars have also been terminated. Earlier also on 19-8-2010, the services of the petitioner and eleven others workers were terminated and with the intervention of the Deputy Commissioner, Kinnaur their services were retained on 19-8-2010.

4. It is further averred that the respondents by colorable exercise of powers have terminated the services of the petitioner in gross violation of the provisions of sections 25-F, 25-G and 25-H of the Act. The respondent No. 1 being model employer cannot be expected to act in the manner and fashion in which they have dealt with the case of the petitioner. Due to the acts of omission and commission on the part of the respondents, the right to livelihood of the petitioner has been taken away, which is highly illegal and bad in the eyes of law. The right of life under Article 21 of the Constitution of India is being snatched by the respondent by resorting to illegal means. The petitioner has raised demand notice and served the same upon the respondent.

5. The following prayer clause has been appended, in the footnote of the petition, which reads as under:

"In view of the aforementioned submissions, it is most respectfully prayed that present petition may kindly be allowed with the following relief (s):

- (i) The respondent company may kindly be directed to re-engage the petitioner in service as supervisor at the same place where he was working prior to his oral illegal termination.
- (ii) The respondent may kindly be directed to grant all consequential benefits to the petitioner such as seniority, arrears of back-wages etc."

6. The lis was resisted and contested by respondent No.1 by filing written reply wherein preliminary objections of maintainability and the petitioner is contract employee engaged by the respondent company have been raised.

7. On merits, it is submitted that the services of the petitioner were engaged for specific time period through contractors to whom work order for providing manpower service in the project was awarded for a specific period throughout the year. The work order was awarded for outsourcing various job/works including data entry/attending/serving in the field and office. The

onus to engage the workers lies on the contractors. The answering respondent has nothing to do with the employment of the petitioner. The petitioner was the employee of contractor and deployed with HPPCL on outsource basis through contractor. The requirement of data entry/attending/security services from the local contractor had shrunk in the year 2016 due to completion of construction work of Kashang Hydro Electric Project Stage-1. The services of the petitioner along-with other eleven workers were not terminated by the respondent company, however, their services were hired by M/s HPPCL on contract basis. It is therefore prayed that in view of the submission made hereinabove, the claim petition of the petitioner may kindly be dismissed in the interest of law and justice and justice be done.

8. The respondent No. 2 *i.e.* Shri Praveen Kumar, Contractor has been duly served in accordance with law but he has failed to appear before this Court, hence, *vide* order dated 10-7-2018, he was proceeded against ex-parte.

9. Reply on behalf of respondent No. 3 was filed wherein preliminary objections qua the petitioner not come to the Court with clean hand and maintainability have been taken. On merits, it is submitted that the workman has never been engaged by the respondent No. 3, hence, there is no question of illegal termination of the services of the petitioner *w.e.f.* 30-6-2016. It is therefore prayed that the petition may kindly be dismissed.

10. While filing rejoinder, the petitioner controverted the averments made thereto in the replies filed by respondent No.1 and 3, and reaffirmed and reiterated those in the petition.

11. On elucidating the pleading of parties, the following issues were struck down for its final determination *vide* Court order dated 30-05-2019:—

1. Whether the termination of the petitioner is violative of the provisions of section 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 as alleged. If so, to what relief the petitioner is entitled to? . . .*OPP.*
2. Whether the reference is not maintainable as alleged. If so its effects thereto? . . .*OPR.*
3. Whether the services of the petitioner was hired through a contractor and he was not the employee of respondent No.1 as alleged. If so its effect thereto? . . .*OPR.*
4. Relief

12. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

13. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

14. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue No. 1	Yes. Entitled to lump sum compensation of ₹ 70,000/- (₹ Seventy Thousand only)
Issue No. 2	No
Issue No. 3	Yes

Relief

Reference is answered in affirmative, as per operative part of award.

REASONS FOR FINDINGS*Issues No.1 to 3 :*

15. All these issues are intermingled and inter connected, as mutually existed and required the common appreciation of evidence, being taken up together for the purpose of their determination and adjudication.

16. To substantiate his case, the petitioner namely Shri Kishore Kumar appeared into the witness dock as (PW-1) to depose that he was engaged as supervisor on 7-7-2010 in project run by respondent No. 1 at Reckong Peo. He continued as such till 30-6-2016 and his services were dispensed with after 30-6-2016 orally without issuing any notice. He approached the respondent for his re-engagement but they refused to give him any work. After his illegal termination, six persons had been engaged by the respondent as attendants. The respondent had also engaged electricians and other tradesmen. Earlier in 2010, the respondent had terminated their services and they had been re-engaged after the respondents entered into an agreement with the representatives of the village in the presence of the Deputy Commissioner *vide* Mark P-1. Their land also been acquired for the project and as such he fall under the category of beneficiaries and the respondent had illegally terminated his services. He prayed that he be re-engaged with all consequential benefits including back-wages. He has placed on record the detail of the outsourced manpower as received under RTI Act, Mark A-2 and the application made by the 14 terminated workers in the year 2010 Mark A-3.

17. In cross-examination, on behalf of respondent No. 1, he admitted that initially he was not engaged with the respondent No. 1. He further admitted that he was not issued any appointment letter by respondent no.1 nor any I card was issued by them. He denied that he was never working with the HPPCL and he had been engaged through a contractor. He admitted that his name is not reflected in (PW-2/A). He admitted that he have no documents to show that his attendance was marked with the HPPCL. He denied that he was an employee of respondent No. 3. He also admitted that he has not placed on record anything to show that he was a beneficiary. When cross-examined on behalf of respondent No. 3, he admitted that he was working with respondent No. 3 and he was engaged by respondent No. 3. He further admitted that the respondent No. 3 had never engaged him. He also admitted that his services were terminated by respondent No. 1. He admitted that his salary was paid by respondent No. 3.

18. Shri Lobha Singh, Clerk in the office of Deputy Commissioner, Kinnaur has appeared into the witness box as (PW-2) and proved on record agreement (PW-2/A). In cross-examination on behalf of respondent No. 1, he admitted that (PW-2/A) does not reflect that the petitioner was privy to the terms of the agreement and his name is not reflected in (PW-2/A). When cross-examined on behalf of respondent No. 3, he admitted that the name of the contractor is also not mentioned in (PW-2/A) nor it bears his signatures.

19. PW-3 Shri Man Chand, President of Kashang Pariyojna Prabhavit Sabha, Village Pangi has deposed that the agreement entered between the HPPCL and the representatives of Pariyojna Prabhavit Sabha, Village Pangi was in respect of 14 workers terminated by the HPPCL which included the petitioner and (PW-2/A) bears his signatures as the President of the Sabha. In cross-examination on behalf of respondent No.1, he admitted that (PW-2/A) does not bears the name of the petitioner. He denied that the HPCL had re-engaged the petitioner after the agreement.

20. In order to rebut, the respondent No.1 examined one Shri Mahender Kumar, General Manager, Civil as (RW-1), who tendered in evidence his affidavit (RW-1/A) wherein he reiterated almost all the averments as made in the reply. He also tendered into evidence letter dated 31-3-2008 (RW-1/B), tender dated 31-3-2008 (RW-1/C), letter dated 7-11-2008 (RW-1/D), work order dated 1-1-2008 (RW-1/E), conditions (RW-1/F), work order dated 27-12-2008 (RW-1/G), conditions (RW-1/H), letter dated 2-3-2009 (RW-1/J), work order dated 2-3-2009 (RW-1/K), conditions (RW-1/L), work order dated 31-3-2009 (RW-1/M), conditions (RW-1/N), letter dated 1-12-2009 (RW-1/O), check list (RW-1/P), work order dated 1-12-2009 (RW-1/Q), conditions (RW-1/R), letter dated 30-9-2011 (RW-1/S), work order dated 30-9-2011 (RW-1/T), conditions (RW-1/U), letter dated 27-5-2014 (RW-1/V), work order dated 19-9-2011 (RW-1/W), letter dated 13-3-2011 (RW-1/X), letter dated 20-9-2012 (RW-1/Y), work order dated 20-9-2012 (RW-1/Z), letter dated 31-12-2012 (RW-1/AA), work order dated 31-12-2012 (RW-1/AB), letter dated 22-9-2014 (RW-1/AC), letter dated 30-3-2015 (RW-1/AD), work order dated 30-3-2015 (RW-1/AE), letter dated 31-3-2016 (RW-1/AF), work order dated 31-3-2016 (RW-1/AG), letter dated 11-5-2016 (RW-1/AH), work order dated 11-5-2016 (RW-1/AJ), work order dated 31-3-2016 (RW-1/AK) and work order dated 31-3-2016 (RW-1/AL).

21. In cross-examination, on behalf of petitioner he denied that the petitioner worked as supervisor in their project. He denied that the petitioner was terminated in the year, 2010. He admitted that there was a compromise effected between the parties before the Deputy Commissioner, Kinnaur on 7-7-2010 that the services of the petitioner shall be reinstated. He admitted that the land of the petitioner was acquired for setting up of the project. He denied that the petitioner had filed complaint to them for not deducting the EPF. When cross-examined on behalf of respondent No. 3, he admitted that the petitioners were working with the respondent since 2010. He further admitted that as per the work orders the nature of work is computer operator.

22. Shri Arvind Negi, Advocate for respondent No. 3 *vide* his separate statement dated 23-3-2022 has stated that he does not want to lead any evidence i.e oral and documentary on behalf of the respondent No. 3.

23. This is the entire oral as well as documentary evidence led from the side of the parties.

24. Shri Vinod Sharma, Learned counsel for the petitioner has contended with all vehemence that the petitioner was engaged as supervisor by respondent No. 1 in the year 2010 and his services were illegally terminated by the respondent No. 1 by an oral dismissal order in the year 2016. Along-with the petitioner as many as eleven other supervisors and two chowkidars were also terminated. The matter was reconciled and with the intervention of the Deputy Commissioner, Kinnaur, their services were re-engaged. He has also argued that the termination of the services of the petitioner is in violation of the salient provision of the Act as well as Articles 14, 16 and 21 of the Constitution of India.

25. *Per contra*, Shri Manoj Chauhan, Ld. Counsel for the respondent No.1 argued that there exists no employee-employer relationship between petitioner and respondent No. 1. He further argued that the petitioner was never engaged by the respondent No. 1 and no appointment letter has been issued to him and even no identity card has been placed on record by him. The petitioner has also failed to place on record the statement of account showing the salary allegedly to be paid by respondent No. 1. No documentary proof showing the contribution towards EPF and ESI has been placed on record. The petitioner has alleged that he was engaged as supervisor by the respondent No. 1, whereas the work order has been issued for data entry operator. The petitioner was the employee of the contractor, who deputed the petitioner with HPPCL. He prayed that the claim petition may kindly be dismissed.

26. Shri Arvind Negi, Ld. Counsel for the respondent No. 3, has contended that the petitioner neither pleaded nor proved on record that he was engaged by respondent No. 3. As a matter of fact, the petitioner was engaged by HPPCL. The petitioner has miserably failed to prove that he was the employee of respondent No. 3. He also prayed for the dismissal of the claim petition.

27. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the petitioner, as well Learned Counsel for the respondents No. 1 & 3 and have also scrutinized the entire case record with minute care, caution and circumspection.

28. Admittedly, the petitioner by way of placing on record oral and documentary proof had tried to established on record to prove that the petitioner has been engaged and working with the respondent No. 1 till the time of his termination. The respondent No.1 *i.e.* Kashang Hydro Electric Project under HPPCL had engaged the services of the petitioner who worked there for six years *i.e.* 2010 to 2016. However, the petitioner himself deposed that Kashang Hydroelectric Project had engaged his services, in the very opening line of his cross-examination. According to him he was engaged by HPPCL. The respondent No. 1 had issued the work orders inviting the job through contractors. However, the petitioner again twisted the fact by deposing that he was working with respondent No. 1 and engaged by him. He has also admitted that there were many contractors registered with HPPCL.

29. As a matter of fact, the present reference has been sent by the appropriate government qua the termination of the services of the petitioner by the respondents No. 1 to 3 w.e.f. 1-7-2016, without complying with the provisions of the Act, the petitioner having been engaged as a supervisor by the principal employer i.e Kashang Hydro Electric Project, HPPCL through the contractors, on outsource basis namely Shri Praveen Kumar and Bharat Lal contractors (Respondents No. 2 & 3). Thus, it is abundantly clear on record that the matter in controversy has been narrowed down in a short compass that whether the respondent No. 1, being principal employer had followed the basic and cardinal principles envisaged under the Act while terminating the services of the petitioner or not? It has been specifically pleaded from the side of the respondent No.1 that the petitioner had been engaged for a specific time period through the contractor to which the allocation of work order has been issued for providing the manpower service in the Project, being awarded for a specific period throughout the year. As a matter of fact, the work order for outsourcing various works including data entry is awarded in the beginning of any financial year considering the various service by flouting short term notice with the prior approval of the competent authority. The services of the petitioner were also outsourced through local contractors, who deployed the petitioner as per requirement, as such, the onus to deploying the manpower lies with the contractor/agency as per the terms and conditions of the contract. Initially, the petitioner was an employee of the contractor and was deployed with HPPCL on outsource basis. In fact, the petitioner has also admitted in his cross-examination that his services were not at all engaged by Kashang Hydro Electric Project or HPPCL. Though, he has tried to improve his version by stating that he was engaged and terminated by respondent No.1 but it is merely an afterthought expression and cannot replace the earlier version as deposed by him in his cross-examination.

30. Verily, much stress has been placed on record from the side of the petitioner to the agreement (PW-2/A), executed between the parties *i.e.* the representatives of HPPCL, the representatives Pariyojna Prabhavit Sabha, Village Pangi (effected community) before the Deputy Commissioner, Kinnaur on 7-7-2010 wherein it has been amicably agreed by all the concerned parties that 14 workers terminated by M/s HPPCL shall be provided livelihood by HPPCL till they got employment through HPPCL or some other agency. Seven new recruitments from Pangi village shall be done through M/s HCC Ltd., within 0-7 days from the date of call off strike subject to permission by the Hon'ble High Court. It is contended before me that the petitioner and eleven

other workers were terminated by the respondent No. 1 and with the intervention of Deputy Commissioner, Kinnaur, their services were restored on 19-8-2010 and a compromise was effected. Though, the petitioner has miserably failed to establish on record that initially he was engaged by respondent No. 1 *i.e.* HPPCL. Neither any appointment letter nor any termination letter has been placed on record. From the recital of the agreement dated 7-7-2010, executed before the Deputy Commissioner, Kinnaur. There was an agreement executed between the parties that the representatives of Project effected members shall be provided the livelihood by HPPCL. Such a recital shall not give any right to the petitioner that he was engaged/appointed by respondent No. 1. More so, the recital of agreement (PW-2/A) dated 7-7-2010, shall not come in any way to substantiate the plea raised from the side of the petitioner. The initial burden lies on the petitioner to prove that he was not engaged by the contractors but by HPPCL.

31. Now, the question which arises for determination before this Tribunal that what relevancy, authenticity and legality attached to the writing dated 7-7-2010 (PW-2/A). All the recital made thereto in such writing amounts to a stop gap arrangement whereby it was resolved by the representatives of all the parties concerned to reconcile the matter. However, providing of livelihood by the respondent No. 1 to the workers, who were terminated by outsourcing agency/contractor, shall providing or offering any appointment/engagement to the petitioner with the respondent No. 1. It is quite apparent on the face of the record that the petitioner was not engaged by the respondent No. 1 directly rather he was engaged on outsource basis through contractor.

32. The next question arise before me that whether the termination of the services of the petitioner *w.e.f.* 1-7-2016, is violative of the provisions of the Act. Amongst arraying both the contractors, as the contesting respondents, one of them while contesting the claim petition averred that the petitioner has neither been engaged by the replying respondent nor terminated his services. The petitioner was engaged by the respondent No. 1. No legal or vested rights of the petitioner have been infringed by the respondent No. 3 in any manner. However, the petitioner as (PW-1) during cross-examination by respondent No. 3 admitted that he was working with respondent No. 1 and he was engaged by respondent No. 1. He was not engaged by respondent No. 3. Both the contractors are not known to him personally. He has not claimed any particular relief against contractors. All his service conditions were being maintained and supervised by respondent No. 1. All the contentions raised at bar are devoid of merits. In my humble opinion, the petitioner miserably failed to lead any cogent, clear and clinching evidence to establish on record that he was engaged by respondent No. 1. In any case, the petitioner has also failed to produce on record any documentary proof regarding his engagement, oral termination, service conditions and over all supervision and control by respondent No. 1. Mere oral deposition in the absence of any cogent documentary proof assumes no significance in the eyes of law. Furthermore, the averments made thereto in the reply filed by respondent No.1 are fully corroborated by the respondent No.1 witness Shri Mahender Kumar General Manager, Civil, HPPCL (RW-1), wherein he has categorically stated that the entire dues to the petitioner is shown to have been paid by the respondent. The petitioner was never engaged by respondent no.1 in any field of work/job at any point of time. The services of the petitioner were engaged on outsource basis through the contractor to whom the respondent no.1 has awarded the work orders from time to time. The petitioner was the employee of contractor and deployed with HPPCL, on outsource through contractors. Undoubtedly, there was an agreement executed before the Deputy Commissioner, Kinnaur on 7-7-2010 whereby the representatives of project effected members, representatives of HPCL and representatives of HCCL were signatory to the said writings. Simple, on the score that the officers of the HPPCL put their signatures to the said writing shall not provide any employment/engagement to the petitioner. The respondent witness categorically admitted that the petitioner filed complaint before the Deputy Commissioner, Kinnaur. The EPF of the petitioner was deducted by the contractor. He also admitted that the agreement bears the signatures of General Manager, Deputy General Manager of HPPCL

respectively being representatives of HPPCL. However, he feigned ignorance that the petitioner was engaged as operator/supervisor. He admitted that after the issuance of the work orders, the same has been accepted by the contractors. Admittedly, the respondent No.1 being principal employer had engaged the services of the petitioner through the contractors though there is a denial on the part of the contractors. It is now fairly established that the services of the petitioner were engaged by the contractors and deployed with HPPCL. It is also admitted position on record that the contractors while terminating the services of the petitioner is to comply with the requirement of the law. The very action on the part of the respondents while terminating the services of the petitioner has to fall within the four corners of the definition of “retrenchment” as envisaged under section 2-oo (bb) of the Act, hence, the termination of the services of the petitioner is held to be bad and nonest in the eyes of law. Since, the petitioner has completed the requirement of days as fixed by the Government for Tribal area, hence, he is also entitled for the protection of section 25-F of the Act. It is also admitted fact that before retrenching the services of the petitioner neither any notice had been issued nor any compensation has been paid. Therefore, in view of the above discussion, I am satisfied that the workman was terminated illegally and unjustifiably without complying with section 25-F of the Act, which provides as under:

"No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until :

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government for such authority as may be specified by the appropriate Government by notification in the Official Gazette".

33. So, in view of this enabling provision of the act, no workman employed in any industry, who has been in “continuous service” for not less than one year, can be retrenched by the employer unless he has been given one month’s notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression “continuous service” has been defined under Section 25-B of the Act, which in its material part reads:

“25B. Definition of continuous service. For the purposes of this Chapter,—

- (1) *a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;*
- (2) *where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—*
 - (a) *for a period of one year, if the workman, during a period of twelve calendar*

months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than:—

- (i) *one hundred and ninety days in the case of a workman employed below ground in a mine; and*
- (ii) *two hundred and forty days, in any other case....”*

34. Since, the petitioner is proved to have completed more than 180 days (as applicable in Tribal area) during the period of twelve calendar months in the preceding year from the date of his retrenchment, his services could not have been terminated unless he was served with one month's mandatory notice and paid the retrenchment compensation, as envisaged under Section 25-F of the Act. Admittedly, the provisions of Section 25-F of the Act were not followed or complied with by the respondent in the latter and spirit. The respondent did not pay the retrenchment compensation to the petitioner, nor had issued any requisite notice to the petitioner.

35. In the back-drop of aforesaid events, it is held that the termination of the petitioner was in violation of the provisions of Sections 25-B and 25-F of the Act. The termination is held to be illegal, unlawful and unjustified.

36. Now, the question arises as to what relief, the workman is entitled to? Their Lordships of Hon'ble Supreme Court in an authority reported as The Workmen of **M/s Firestone Tyre & Rubber Co. of India (Pvt.) Ltd. etc. vs. The Management & Ors. 1973 (1) SCC 813**, Hon'ble Supreme Court observed as under:

"10. In a particular case, after setting aside the order of dismissal, whether a workman should be reinstated or paid compensation is, as held by this Court in The Management of Panitole Tea Estate Vs. The workmen (1971) 1 SCC 742 within the judicial decision of a Labour Court of Tribunal."

37. Similarly, Their Lordship of Hon'ble Delhi High Court in another authority reported as **Nehru Yuva Kendra Sangathan Vs. Union of India & Ors. 2000 IV AD (Delhi) 709, Hon'ble Delhi High Court** dealt with the question of reinstatement and back wages and observed as under:

"The decision of the Supreme Court rendered in the 1970s and 1980s that reinstatement with back wages was the norm in cases where the termination of the services of the workman was held inoperative. The decisions rendered in the 1990s, including the decision of the Constitution Bench in the Punjab Land Development and Reclamation Corporation Ltd., Chandigarh seem to suggest that compensation in lieu of reinstatement and back wages is now the norm. In any case, since I am bound to follow the decision of the Constitution Bench, I, therefore, conclude that reinstatement is not the inevitable consequence of quashing an order of termination; compensation can be awarded in lieu of reinstatement and back wages."

38. To combat with, I am persuaded to award compensation in lieu of reinstatement and back wages to the workman.

39. Similarly, Their Lordships of Hon'ble Supreme Court in another authority reported as **M.L. Binjolkar Vs. State of Madhya Pradesh, 2005 VI (S.C.) 413**, Hon'ble Supreme Court observed in paragraph 7 as under :

"Though the High Court has not specifically dealt with the question as to what would be the appropriate quantum, keeping in view the law laid down by this Court in various cases e.g. Hindustan Motors Ltd. *Vs.* Tapanj Kumar Bhattacharya & Anr. (2002 (6) SCC 41), Rajendra Prasad Arya *Vs.* State of Bihar (200 (9) SCC 514), Sonapat Cooperative Sugar Mills Ltd. *Vs.* Ajit Singh (2005 (3) SCC 232), Haryana State Cooperative Land Development Bank *Vs.* Neelam (2005 (5) SCC 91), Manager, Reserve Bank of India, Bangalore *Vs.* S. Mani & Ors. (2005 (5) SCC 100) and Allahabad Jal Sansthan *Vs.* Daya Shankar Rai & Anr. (2005 (5) SCC 124), we do not find any scope for interference. The earlier view was that whenever there is interference with the order of termination or retirement, full back wages were the natural corollary. It has been laid down in the cases noted above that it would depend upon several factors and the court has to weigh the pros and cons of each case and to take a pragmatic view."

40. Their Lordship of Hon'ble Supreme Court in another authority reported as **U.P. State Brassware Corporation Limited and another Vs. Uday Narain Pandey, (2006) 1 SCC 479,** wherein the Hon'ble Supreme Court, observed as under:

"A Division Bench of this Court in **M.L. Binjolkar v. State of M.P. (2005) 6 SCC 224,** referring to a large number of decisions, held as under:

"The earlier view was that whenever there is interference with the order of termination or retirement, fullback wages were the natural corollary. It has been laid down in the cases noted above that it would depend upon several factors and the Court has to weigh the pros and cons of each case and to take a pragmatic view."

41. In the exposition of law enumerated hereinbefore, now, I would like to examine the merits of the case.

42. In the instant case, the petitioner was engaged by the respondent no.1 through contractors. The petitioner had worked in the capacity of workman. Since, the services of the petitioner were not directly engaged by the respondent No.1, hence, the only remedy available with this Tribunal is to award compensation amount to the petitioner in lump sum amount.

43. Recent developments, particularly the trends particularly much after the year 2007 shows that grant of compensation in lieu of reinstatement has gained precedence, more particularly, where the services of the workmen have been terminated because of procedural defects. In the case in hand too the termination is found to be illegal in view of the provisions Act, both ends of justice would thus be met, in case the petitioner is granted compensation in lieu of reinstatement thereof. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court titled as **Bharat Sanchar Nigam Ltd. Vs. Bhurumal (2014) 7 SCC 177** and further reiterated lately in **P. Karupaiiah (dead) through Legal Representatives Vs. General Manager, Thruuvalluvar Transport Corporation Ltd. (2018) 12 SCC 663** and **Rashtrasant Tukdoji Maharaj Technical Education Samnatha, Nagpur Vs. Prashant Manikrao Kubitkar (2018) 12 SCC 294.**

44. For the foregoing reasons and keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above, the petitioner is held entitled for a lump sum compensation amount of ₹ 70,000/- (₹ Seventy Thousand only) as lump sum compensation from the respondents, who are jointly and severally liable to pay the awarded amount to the petitioner. All these issues are decided accordingly.

Relief:

45. As a sequel to my above discussion and findings on issues No.1 to 3, the claim of the petitioner succeeds and is hereby allowed and the petitioner is awarded lump sum compensation of **₹ 70,000/- (Rupees Seventy Thousand only) to the workman, to be paid by the respondents jointly and severally within two months from the date of announcement** of the award, failing which interest at the rate of 9% (nine percent) would be payable by the respondents to the workman. It is expressly made clear that apart from lump sum compensation, **the petitioner is entitled for all his legal dues i.e. gratuity, leave encashment, EPF, ESI etc.**, if any, in accordance with law. The reference is disposed off in the aforesaid terms. Let a copy of this award be communicated to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 1st day of June, 2022.

Sd/-
(RAJESH TOMER),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

**IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 07 of 2018
Instituted on : 30-12-2017
Decided on : 01-06-2022

Bhajan Dass s/o Shri Nargud, r/o Village and Post Office Pangri, Tehsil Kalpa, District Kinnaur, H.P. . *Petitioner* .

VERSUS

1. The General Manager, Kashang Hydro Electric Project, HPPCL, Knifed Building, IKHP, Reckong Peo, District Kinnaur, H.P.
2. Praveen Kumar, Contractor, VPO Pangri, Tehsil Kalpa, District Kinnaur, H.P.
3. Bharat Lal Contractor, VPO Pangri, Tehsil Kalpa, District Kinnaur, H.P. . *Respondents*.

Reference petition under section 10 of the Industrial Disputes Act

For the petitioner : Shri Vinod Sharma, Adv.
For the Respondent No. 1 : Shri Manoj Chauhan, Adv.
For the Respondent No. 2 : Ex-parte.
For the Respondent No. 3 : Shri Arvind Negi, Adv.

AWARD

The following reference petition has been, received from the Appropriate Government, *vide* notification dated 31-10-2017, under section 10 of the Industrial Disputes Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, as under:

“Whether termination of services of Shri Bhajan Dass s/o Shri Nargud, r/o Village and Post Office Pangi, Tehsil Kalpa, District Kinnaur, H.P. by (i) Praveen Kumar, Contractor, VPO Pangi, Tehsil Kalpa, District Kinnaur, H.P. (ii) Bharat Lal Contractor, VPO Pangi, Tehsil Kalpa, District Kinnaur, H.P. (iii) The General Manager, Kashang Hydro Electric Project, HPPCL, Knifed Building, IKHP, Reckong Peo, District Kinnaur, H.P. (Principal Employer) *w.e.f.* 1-7-2016 without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. To the fore, Shri Bhajan Dass (hereinafter to be referred as the petitioner) has instituted the claim petition against the General Manager, Kashang Hydro Electric Project, HPPCL (**hereinafter to be referred as respondent No. 1**), Shri Praveen Kumar Contractor (**hereinafter to be referred as the respondent No. 2**) and Shri Bharat Lal, Contractor (**hereinafter to be referred as the respondent No. 3**) under the provisions of the Act.

3. Key facts necessary for the disposal of the present reference petition are thus that the petitioner was engaged as supervisor for six years *w.e.f.* 8-7-2010 and remained posted as such till 30-6-2016. On 01-07-2016, the respondent company has illegally and without any notice has terminated the services of the petitioner. The oral termination of the services of the petitioner lead him to approach the respondents for his re-engagement into services but to no avail. Along-with the petitioner the services of eleven supervisors and two chowkidars have also been terminated. Earlier also on 19-8-2010, the services of the petitioner and eleven others workers were terminated and with the intervention of the Deputy Commissioner, Kinnaur their services were retained on 19-8-2010.

4. It is further averred that the respondents by colorable exercise of powers have terminated the services of the petitioner in gross violation of the provisions of sections 25-F, 25-G and 25-H of the Act. The respondent No. 1 being model employer cannot be expected to act in the manner and fashion in which they have dealt with the case of the petitioner. Due to the acts of omission and commission on the part of the respondents, the right to livelihood of the petitioner has been taken away, which is highly illegal and bad in the eyes of law. The right of life under Article 21 of the Constitution of India is being snatched by the respondent by resorting to illegal means. The petitioner has raised demand notice and served the same upon the respondent.

5. The following prayer clause has been appended, in the footnote of the petition, which reads as under:

“In view of the aforementioned submissions, it is most respectfully prayed that present petition may kindly be allowed with the following relief(s):

- (i) The respondent company may kindly be directed to re-engage the petitioner in service as supervisor at the same place where he was working prior to his oral illegal termination.
- (ii) The respondent may kindly be directed to grant all consequential benefits to the petitioner such as seniority, arrears of back-wages etc.”

6. The lis was resisted and contested by respondent No.1 by filing written reply wherein preliminary objections of maintainability and the petitioner is contract employee engaged by the respondent company have been raised.

7. On merits, it is submitted that the services of the petitioner were engaged for specific time period through contractors to whom work order for providing manpower service in the project was awarded for a specific period throughout the year. The work order was awarded for outsourcing various job/works including data entry/attending/serving in the field and office. The onus to engage the workers lies on the contractors. The answering respondent has nothing to do with the employment of the petitioner. The petitioner was the employee of contractor and deployed with HPPCL on outsource basis through contractor. The requirement of data entry/attending/security services from the local contractor had shrunk in the year 2016 due to completion of construction work of Kashang Hydro Electric Project Stage-1. The services of the petitioner along-with other eleven workers were not terminated by the respondent company, however, their services were hired by M/s HPPCL on contract basis. It is therefore prayed that in view of the submission made hereinabove, the claim petition of the petitioner may kindly be dismissed in the interest of law and justice and justice be done.

8. The respondent No. 2 *i.e.* Shri Praveen Kumar, Contractor has been duly served in accordance with law but he has failed to appear before this Court, hence, vide order dated 10.7.2018, he was proceeded against ex-parte.

9. Reply on behalf of respondent No. 3 was filed wherein preliminary objections qua the petitioner not come to the Court with clean hand and maintainability have been taken. On merits, it is submitted that the workman has never been engaged by the respondent No. 3, hence, there is no question of illegal termination of the services of the petitioner *w.e.f.* 30-6-2016. It is therefore prayed that the petition may kindly be dismissed.

10. While filing rejoinder, the petitioner controverted the averments made thereto in the replies filed by respondent No. 1 and 3, and reaffirmed and reiterated those in the petition.

11. On elucidating the pleading of parties, the following issues were struck down for its final determination vide Court order dated 30.05.2019:—

1. Whether the termination of the petitioner is violative of the provisions of section 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 as alleged. If so, to what relief the petitioner is entitled to? . . .*OPP.*
2. Whether the reference is not maintainable as alleged. If so its effects thereto? . . .*OPR.*
3. Whether the services of the petitioner was hired through a contractor and he was not the employee of respondent no.1 as alleged. If so its effect thereto? . . .*OPR.*
4. Relief

12. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

13. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

14. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue No. 1	Yes. Entitled to lump sum compensation of ₹ 70,000/-. (₹ Seventy Thousand only).
Issue No. 2	No.
Issue No. 3	Yes.
Relief.	Reference is answered in affirmative, as per operative part of award

REASONS FOR FINDINGS

Issues No.1 to 3 :

15. All these issues are intermingled and inter connected, as mutually existed and required the common appreciation of evidence, being taken up together for the purpose of their determination and adjudication.

16. To substantiate his case, the petitioner namely Shri Bhajan Dass appeared into the witness dock as (PW-1) to depose that he was engaged as supervisor on 7-7-2010 in project run by respondent No.1 at Reckong Peo. He continued as such till 30-6-2016 and his services were dispensed with after 30-6-2016 orally without issuing any notice. He approached the respondent for his re-engagement but they refused to give him any work. After his illegal termination, six persons had been engaged by the respondent as attendants. The respondent had also engaged electricians and other tradesmen. Earlier in 2010, the respondent had terminated their services and they had been re-engaged after the respondents entered into an agreement with the representatives of the village in the presence of the Deputy Commissioner *vide* Mark P-1. Their land also been acquired for the project and as such he fall under the category of beneficiaries and the respondent had illegally terminated his services. He prayed that he be re-engaged with all consequential benefits including back-wages. He has placed on record the detail of the outsourced manpower as received under RTI Act, Mark A-2 and the application made by the 14 terminated workers in the year 2010 Mark A-3.

17. In cross-examination, on behalf of respondent No. 1, he admitted that initially he was not engaged with the respondent No. 1. He further admitted that he was not issued any appointment letter by respondent No.1 nor any I card was issued by them. He denied that he was never working with the HPPCL and he had been engaged through a contractor. He admitted that his name is not reflected in (PW-2/A). He admitted that he have no documents to show that his attendance was marked with the HPPCL. He denied that he was an employee of respondent No. 3. He also admitted that he has not placed on record anything to show that he was a beneficiary. When cross-examined on behalf of respondent No. 3, he admitted that he was working with respondent No. 3 and he was engaged by respondent No. 3. He further admitted that the respondent No. 3 had never engaged him. He also admitted that his services were terminated by respondent No. 1. He admitted that his salary was paid by respondent No. 3.

18. Shri Lobha Singh, Clerk in the office of Deputy Commissioner, Kinnaur has appeared into the witness box as (PW-2) and proved on record agreement (PW-2/A). In cross-examination on behalf of respondent No. 1, he admitted that (PW-2/A) does not reflect that the petitioner was privy to the terms of the agreement and his name is not reflected in (PW-2/A). When cross-examined on

behalf of respondent No. 3, he admitted that the name of the contractor is also not mentioned in (PW-2/A) nor it bears his signatures.

19. PW-3 Shri Man Chand, President of Kashang Pariyojna Prabhavit Sabha, Village Pangi has deposed that the agreement entered between the HPPCL and the representatives of Pariyojna Prabhavit Sabha, Village Pangi was in respect of 14 workers terminated by the HPPCL which included the petitioner and (PW-2/A) bears his signatures as the President of the Sabha. In cross-examination on behalf of respondent No.1, he admitted that (PW-2/A) does not bears the name of the petitioner. He denied that the HPCL had re-engaged the petitioner after the agreement.

20. In order to rebut, the respondent No. 1 examined one Shri Mahender Kumar, General Manager, Civil as (RW-1), who tendered in evidence his affidavit (RW-1/A) wherein he reiterated almost all the averments as made in the reply. He also tendered into evidence letter dated 31-3-2008 (RW-1/B), tender dated 31-3-2008 (RW-1/C), letter dated 7-11-2008 (RW-1/D), work order dated 1-1-2008 (RW-1/E), conditions (RW-1/F), work order dated 27-12-2008 (RW-1/G), conditions (RW-1/H), letter dated 2-3-2009 (RW-1/J), work order dated 2-3-2009 (RW-1/K), conditions (RW-1/L), work order dated 31-3-2009 (RW-1/M), conditions (RW-1/N), letter dated 1-12-2009 (RW-1/O), check list (RW-1/P), work order dated 1-12-2009 (RW-1/Q), conditions (RW-1/R), letter dated 30-9-2011 (RW-1/S), work order dated 30-9-2011 (RW-1/T), conditions (RW-1/U), letter dated 27-5-2014 (RW-1/V), work order dated 19-9-2011 (RW-1/W), letter dated 13-3-2011 (RW-1/X), letter dated 20-9-2012 (RW-1/Y), work order dated 20-9-2012 (RW-1/Z), letter dated 31-12-2012 (RW-1/AA), work order dated 31-12-2012 (RW-1/AB), letter dated 22-9-2014 (RW-1/AC), letter dated 30-3-2015 (RW-1/AD), work order dated 30-3-2015 (RW-1/AE), letter dated 31-3-2016 (RW-1/AF), work order dated 31-3-2016 (RW-1/AG), letter dated 11-5-2016 (RW-1/AH), work order dated 11-5-2016 (RW-1/AJ), work order dated 31-3-2016 (RW-1/AK) and work order dated 31-3-2016 (RW-1/AL).

21. In cross-examination, on behalf of petitioner he denied that the petitioner worked as supervisor in their project. He denied that the petitioner was terminated in the year, 2010. He admitted that there was a compromise effected between the parties before the Deputy Commissioner, Kinnaur on 7-7-2010 that the services of the petitioner shall be reinstated. He admitted that the land of the petitioner was acquired for setting up of the project. He denied that the petitioner had filed complaint to them for not deducting the EPF. When cross-examined on behalf of respondent No. 3, he admitted that the petitioners were working with the respondent since 2010. He further admitted that as per the work orders the nature of work is computer operator.

22. Shri Arvind Negi, Advocate for respondent No. 3 *vide* his separate statement dated 23-3-2022 has stated that he does not want to lead any evidence *i.e.* oral and documentary on behalf of the respondent No. 3.

23. This is the entire oral as well as documentary evidence led from the side of the parties.

24. Shri Vinod Sharma, Learned counsel for the petitioner has contended with all vehemence that the petitioner was engaged as supervisor by respondent No. 1 in the year 2010 and his services were illegally terminated by the respondent No. 1 by an oral dismissal order in the year 2016. Along-with the petitioner as many as eleven other supervisors and two chowkidars were also terminated. The matter was reconciled and with the intervention of the Deputy Commissioner, Kinnaur, their services were re-engaged. He has also argued that the termination of the services of the petitioner is in violation of the salient provision of the Act as well as Articles 14, 16 and 21 of the Constitution of India.

25. *Per contra*, Shri Manoj Chauhan, Ld. Counsel for the respondent No.1 argued that there exists no employee-employer relationship between petitioner and respondent No. 1. He further argued that the petitioner was never engaged by the respondent No. 1 and no appointment letter has been issued to him and even no identity card has been placed on record by him. The petitioner has also failed to place on record the statement of account showing the salary allegedly to be paid by respondent No. 1. No documentary proof showing the contribution towards EPF and ESI has been placed on record. The petitioner has alleged that he was engaged as supervisor by the respondent No. 1, whereas the work order has been issued for data entry operator. The petitioner was the employee of the contractor, who deputed the petitioner with HPPCL. He prayed that the claim petition may kindly be dismissed.

26. Shri Arvind Negi, Ld. Counsel for the respondent No. 3, has contended that the petitioner neither pleaded nor proved on record that he was engaged by respondent No. 3. As a matter of fact, the petitioner was engaged by HPPCL. The petitioner has miserably failed to prove that he was the employee of respondent No. 3. He also prayed for the dismissal of the claim petition.

27. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the petitioner, as well Learned Counsel for the respondents No. 1 & 3 and have also scrutinized the entire case record with minute care, caution and circumspection.

28. Admittedly, the petitioner by way of placing on record oral and documentary proof had tried to established on record to prove that the petitioner has been engaged and working with the respondent No. 1 till the time of his termination. The respondent No. 1 *i.e.* Kashang Hydro Electric Project under HPPCL had engaged the services of the petitioner who worked there for six years *i.e.* 2010 to 2016. However, the petitioner himself deposed that Kashang Hydroelectric Project had engaged his services, in the very opening line of his cross-examination. According to him he was engaged by HPPCL. The respondent No. 1 had issued the work orders inviting the job through contractors. However, the petitioner again twisted the fact by deposing that he was working with respondent No. 1 and engaged by him. He has also admitted that there were many contractors registered with HPPCL.

29. As a matter of fact, the present reference has been sent by the appropriate government qua the termination of the services of the petitioner by the respondents' No. 1 to 3 w.e.f. 1-7-2016, without complying with the provisions of the Act, the petitioner having been engaged as a supervisor by the principal employer i.e. Kashang Hydro Electric Project, HPPCL through the contractors, on outsource basis namely Shri Praveen Kumar and Bharat Lal contractors (Respondents No. 2 & 3). Thus, it is abundantly clear on record that the matter in controversy has been narrowed down in a short compass that whether the respondent No. 1, being principal employer had followed the basic and cardinal principles envisaged under the Act while terminating the services of the petitioner or not? It has been specifically pleaded from the side of the respondent No.1 that the petitioner had been engaged for a specific time period through the contractor to which the allocation of work order has been issued for providing the manpower service in the Project, being awarded for a specific period throughout the year. As a matter of fact, the work order for outsourcing various works including data entry is awarded in the beginning of any financial year considering the various service by flouting short term notice with the prior approval of the competent authority. The services of the petitioner were also outsourced through local contractors, who deployed the petitioner as per requirement, as such, the onus to deploying the manpower lies with the contractor/agency as per the terms and conditions of the contract. Initially, the petitioner was an employee of the contractor and was deployed with HPPCL on outsource basis. In fact, the petitioner has also admitted in his cross-examination that his services were not at all engaged by Kashang Hydro Electric Project or HPPCL. Though, he has tried to improve his version by stating

that he was engaged and terminated by respondent No. 1 but it is merely an afterthought expression and cannot replace the earlier version as deposed by him in his cross-examination.

30. Verily, much stress has been placed on record from the side of the petitioner to the agreement (PW-2/A), executed between the parties *i.e.* the representatives of HPPCL, the representatives Pariyojna Prabhavit Sabha, Village Pangi (effected community) before the Deputy Commissioner, Kinnaur on 7-7-2010 wherein it has been amicably agreed by all the concerned parties that 14 workers terminated by M/s HPPCL shall be provided livelihood by HPPCL till they got employment through HPPCL or some other agency. Seven new recruitments from Pangi village shall be done through M/s HCC Ltd., within 0-7 days from the date of call off strike subject to permission by the Hon'ble High Court. It is contended before me that the petitioner and eleven other workers were terminated by the respondent No. 1 and with the intervention of Deputy Commissioner, Kinnaur, their services were restored on 19-8-2010 and a compromise was effected. Though, the petitioner has miserably failed to establish on record that initially he was engaged by respondent No. 1 *i.e.* HPPCL. Neither any appointment letter nor any termination letter has been placed on record. From the recital of the agreement dated 7-7-2010, executed before the Deputy Commissioner, Kinnaur. There was an agreement executed between the parties that the representatives of Project effected members shall be provided the livelihood by HPPCL. Such a recital shall not give any right to the petitioner that he was engaged/appointed by respondent No. 1. More so, the recital of agreement (PW-2/A) dated 7-7-2010, shall not come in any way to substantiate the plea raised from the side of the petitioner. The initial burden lies on the petitioner to prove that he was not engaged by the contractors but by HPPCL.

31. Now, the question which arises for determination before this Tribunal that what relevancy, authenticity and legality attached to the writing dated 7-7-2010 (PW-2/A). All the recital made thereto in such writing amounts to a stop gap arrangement whereby it was resolved by the representatives of all the parties concerned to reconcile the matter. However, providing of livelihood by the respondent No. 1 to the workers, who were terminated by outsourcing agency/contractor, shall providing or offering any appointment/engagement to the petitioner with the respondent No. 1. It is quite apparent on the face of the record that the petitioner was not engaged by the respondent No. 1 directly rather he was engaged on outsource basis through contractor.

32. The next question arise before me that whether the termination of the services of the petitioner *w.e.f.* 1-7-2016, is violative of the provisions of the Act. Amongst arraying both the contractors, as the contesting respondents, one of them while contesting the claim petition averred that the petitioner has neither been engaged by the replying respondent nor terminated his services. The petitioner was engaged by the respondent No. 1. No legal or vested rights of the petitioner have been infringed by the respondent no.3 in any manner. However, the petitioner as (PW-1) during cross-examination by respondent No. 3 admitted that he was working with respondent No. 1 and he was engaged by respondent No. 1. He was not engaged by respondent No. 3. Both the contractors are not known to him personally. He has not claimed any particular relief against contractors. All his service conditions were being maintained and supervised by respondent No. 1. All the contentions raised at bar are devoid of merits. In my humble opinion, the petitioner miserably failed to lead any cogent, clear and clinching evidence to establish on record that he was engaged by respondent No. 1. In any case, the petitioner has also failed to produce on record any documentary proof regarding his engagement, oral termination, service conditions and over all supervision and control by respondent No. 1. Mere oral deposition in the absence of any cogent documentary proof assumes no significance in the eyes of law. Furthermore, the averments made thereto in the reply filed by respondent No. 1 are fully corroborated by the respondent No. 1 witness Shri Mahender Kumar General Manager, Civil, HPPCL (RW-1), wherein he has categorically stated that the entire dues to the petitioner is shown to have been paid by the respondent. The petitioner was never engaged by respondent No. 1 in any field of work/job at any point of time. The services of the

petitioner were engaged on outsource basis through the contractor to whom the respondent No. 1 has awarded the work orders from time to time. The petitioner was the employee of contractor and deployed with HPPCL, on outsource through contractors. Undoubtedly, there was an agreement executed before the Deputy Commissioner, Kinnaur on 7-7-2010 whereby the representatives of project effected members, representatives of HPCL and representatives of HCCL were signatory to the said writings. Simple, on the score that the officers of the HPPCL put their signatures to the said writing shall not provide any employment/engagement to the petitioner. The respondent witness categorically admitted that the petitioner filed complaint before the Deputy Commissioner, Kinnaur. The EPF of the petitioner was deducted by the contractor. He also admitted that the agreement bears the signatures of General Manager, Deputy General Manager of HPPCL respectively being representatives of HPPCL. However, he feigned ignorance that the petitioner was engaged as operator/supervisor. He admitted that after the issuance of the work orders, the same has been accepted by the contractors. Admittedly, the respondent No. 1 being principal employer had engaged the services of the petitioner through the contractors though there is a denial on the part of the contractors. It is now fairly established that the services of the petitioner were engaged by the contractors and deployed with HPPCL. It is also admitted position on record that the contractors while terminating the services of the petitioner is to comply with the requirement of the law. The very action on the part of the respondents while terminating the services of the petitioner has to fall within the four corners of the definition of “retrenchment” as envisaged under section 2-oo (bb) of the Act, hence, the termination of the services of the petitioner is held to be bad and nonest in the eyes of law. Since, the petitioner has completed the requirement of days as fixed by the Government for Tribal area, hence, he is also entitled for the protection of section 25-F of the Act. It is also admitted fact that before retrenching the services of the petitioner neither any notice had been issued nor any compensation has been paid. Therefore, in view of the above discussion, I am satisfied that the workman was terminated illegally and unjustifiably without complying with section 25-F of the Act, which provides as under:

"No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until :

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government for such authority as may be specified by the appropriate Government by notification in the Official Gazette".

33. So, in view of this enabling provision of the act, no workman employed in any industry, who has been in “continuous service” for not less than one year, can be retrenched by the employer unless he has been given one month’s notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression “continuous service” has been defined under Section 25-B of the Act, which in its material part reads:

“25B. Definition of continuous service. For the purposes of this Chapter,—

- (1) a workman shall be said to be in continuous service for a period if he is, for that

period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) *where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—*

(a) *for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—*

(i) *one hundred and ninety days in the case of a workman employed below ground in a mine; and*

(ii) *two hundred and forty days, in any other case....”*

34. Since, the petitioner is proved to have completed more than 180 days (as applicable in Tribal area) during the period of twelve calendar months in the preceding year from the date of his retrenchment, his services could not have been terminated unless he was served with one month's mandatory notice and paid the retrenchment compensation, as envisaged under Section 25-F of the Act. Admittedly, the provisions of Section 25-F of the Act were not followed or complied with by the respondent in the latter and spirit. The respondent did not pay the retrenchment compensation to the petitioner, nor had issued any requisite notice to the petitioner.

35. In the back-drop of aforesaid events, it is held that the termination of the petitioner was in violation of the provisions of Sections 25-B and 25-F of the Act. The termination is held to be illegal, unlawful and unjustified.

36. Now, the question arises as to what relief, the workman is entitled to? Their Lordships of Hon'ble Supreme Court in an authority reported as The Workmen of M/s Firestone Tyre & Rubber Co. of India (Pvt.) Ltd. etc. vs. The Management & Ors. 1973 (1) SCC 813, Hon'ble Supreme Court observed as under:

"10. In a particular case, after setting aside the order of dismissal, whether a workman should be reinstated or paid compensation is, as held by this Court in The Management of Panitole Tea Estate Vs. The workmen (1971) 1 SCC 742 within the judicial decision of a Labour Court of Tribunal."

37. Similarly, Their Lordship of Hon'ble Delhi High Court in another authority reported as Nehru Yuva Kendra Sangathan Vs. Union of India & Ors. 2000 IV AD (Delhi) 709, Hon'ble Delhi High Court dealt with the question of reinstatement and back wages and observed as under:

"The decision of the Supreme Court rendered in the 1970s and 1980s that reinstatement with back wages was the norm in cases where the termination of the services of the workman was held inoperative. The decisions rendered in the 1990s, including the decision of the Constitution Bench in the Punjab Land Development and Reclamation Corporation Ltd., Chandigarh seem to suggest that compensation in lieu of reinstatement and back wages is now the norm. In any case, since I am bound to follow the decision of the Constitution Bench, I, therefore, conclude that reinstatement is not the inevitable

consequence of quashing an order of termination; compensation can be awarded in lieu of reinstatement and back wages."

38. To combat with, I am persuaded to award compensation in lieu of reinstatement and back wages to the workman.

39. Similarly, Their Lordships of Hon'ble Supreme Court in another authority reported as **M.L. Binjolkar Vs. State of Madhya Pradesh, 2005 VI (S.C.) 413**, Hon'ble Supreme Court observed in paragraph 7 as under :

"Though the High Court has not specifically dealt with the question as to what would be the appropriate quantum, keeping in view the law laid down by this Court in various cases e.g. Hindustan Motors Ltd. Vs. Tapanj Kumar Bhattarcharya & Anr. (2002 (6) SCC 41), Rajendra Prasad Arya Vs. State of Bihar (200 (9) SCC 514), Sonapat Cooperative Sugar Mills Ltd. Vs. Ajit Singh (2005 (3) SCC 232), Haryana State Cooperative Land Development Bank Vs. Neelam (2005 (5) SCC 91), Manager, Reserve Bank of India, Bangalore Vs. S. Mani & Ors. (2005 (5) SCC 100) and Allahabad Jal Sansthan Vs. Daya Shankar Rai & Anr. (2005 (5) SCC 124), we do not find any scope for interference. The earlier view was that whenever there is interference with the order of termination or retirement, full back wages were the natural corollary. It has been laid down in the cases noted above that it would depend upon several factors and the court has to weigh the pros and cons of each case and to take a pragmatic view."

40. Their Lordship of Hon'ble Supreme Court in another authority reported as **U.P. State Brassware Corporation Limited and another Vs. Uday Narain Pandey, (2006) 1 SCC 479**, wherein the Hon'ble Supreme Court, observed as under:

"A Division Bench of this Court in M.L. Binjolkar v. State of M.P. (2005) 6 SCC 224, referring to a large number of decisions, held as under:

"The earlier view was that whenever there is interference with the order of termination or retirement, fullback wages were the natural corollary. It has been laid down in the cases noted above that it would depend upon several factors and the Court has to weigh the pros and cons of each case and to take a pragmatic view."

41. In the exposition of law enumerated hereinbefore, now, I would like to examine the merits of the case.

42. In the instant case, the petitioner was engaged by the respondent No. 1 through contractors. The petitioner had worked in the capacity of workman. Since, the services of the petitioner were not directly engaged by the respondent No. 1, hence, the only remedy available with this Tribunal is to award compensation amount to the petitioner in lump sum amount.

43. Recent developments, particularly the trends particularly much after the year 2007 shows that grant of compensation in lieu of reinstatement has gained precedence, more particularly, where the services of the workmen have been terminated because of procedural defects. In the case in hand too the termination is found to be illegal in view of the provisions Act, both ends of justice would thus be met, in case the petitioner is granted compensation in lieu of reinstatement thereof. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court titled as **Bharat Sanchar Nigam Ltd. Vs. Bhurumal (2014) 7 SCC 177** and further reiterated lately in **P. Karupaiah (dead) through Legal Representatives Vs. General Manager, Thruvulluvar Transport Corporation Ltd. (2018) 12 SCC 663** and **Rashtrasant Tukdoji Maharaj Technical Education Samnatha, Nagpur Vs. Prashant Manikrao Kubitkar (2018) 12 SCC 294**.

44. For the foregoing reasons and keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above, the petitioner is held entitled for a lump sum compensation amount of ₹ 70,000/- (₹ Seventy Thousand only) as lump sum compensation from the respondents, who are jointly and severally liable to pay the awarded amount to the petitioner. All these issues are decided accordingly.

Relief :

45. As a sequel to my above discussion and findings on issues No.1 to 3, the claim of the petitioner succeeds and is hereby allowed and the petitioner is awarded lump sum compensation of **₹ 70,000/- (Rupees Seventy Thousand only) to the workman, to be paid by the respondents jointly and severally within two months from the date of announcement** of the award, failing which interest at the rate of 9% (nine percent) would be payable by the respondent society to the workman. It is expressly made clear that apart from lump sum compensation, **the petitioner is entitled for all his legal dues i.e. gratuity, leave encashment, EPF, ESI etc.**, if any, in accordance with law. The reference is disposed off in the aforesaid terms. Let a copy of this award be communicated to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 1st day of June, 2022.

Sd/-
(RAJESH TOMER),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

**IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number	: 08 of 2018
Instituted on	: 30-12-2017
Decided on	: 01-06-2022

Chhering Giachho s/o Shri Krishan Bhagat r/o Village and Post Office Pangti, Tehsil Kalpa, District Kinnaur, H.P. . *Petitioner.*

VERSUS

1. The General Manager, Kashang Hydro Electric Project, HPPCL, Knifed Building, IKHP, Reckong Peo, District Kinnaur, H.P.
 2. Praveen Kumar, Contractor, VPO Pangti, Tehsil Kalpa, District Kinnaur, H.P.
 3. Bharat Lal, Contractor, VPO Pangti, Tehsil Kalpa, District Kinnaur, H.P.
- . *Respondents.*

Reference petition under section 10 of the Industrial Disputes Act

For the petitioner	: Shri Vinod Sharma, Adv
For the Respondent No. 1	: Shri Manoj Chauhan, Adv.
For the Respondent No. 2	: Ex-parte.
For the Respondent No. 3	: Shri Arvind Negi, Adv.

AWARD

The following reference petition has been, received from the Appropriate Government, *vide* notification dated 31-10-2017, under section 10 of the Industrial Disputes Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, as under:

“Whether termination of services of Shri Chhering Giachho s/o Shri Krishan Bhagat, r/o Village and Post Office Pangti, Tehsil Kalpa, District Kinnaur, H.P by (i) Praveen Kumar, Contractor, VPO Pangti, Tehsil Kalpa, District Kinnaur, H.P. (ii) Bharat Lal, Contractor, VPO Pangti, Tehsil Kalpa, District Kinnaur, H.P (iii) The General Manager, Kashang Hydro Electric Project, HPPCL, Knifed Building, IKHP, Reckong Peo, District Kinnaur, H.P. (Principal Employer) *w.e.f.* 1-7-2016 without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. To the fore, Shri Chhering Giachho (hereinafter to be referred as the petitioner) has instituted the claim petition against the General Manager, Kashang Hydro Electric Project, HPPCL (**hereinafter to be referred as respondent No. 1**), Shri Praveen Kumar Contractor (**hereinafter to be referred as the respondent No. 2**) and Shri Bharat Lal, Contractor (**hereinafter to be referred as the respondent No. 3**) under the provisions of the Act.

3. Key facts necessary for the disposal of the present reference petition are thus that the petitioner was engaged as supervisor for six years *w.e.f.* 8-7-2010 and remained posted as such till 30-6-2016. On 01-07-2016, the respondent company has illegally and without any notice has terminated the services of the petitioner. The oral termination of the services of the petitioner lead him to approach the respondents for his re-engagement into services but to no avail. Along-with the petitioner the services of eleven supervisors and two chowkidars have also been terminated. Earlier also on 19-8-2010, the services of the petitioner and eleven others workers were terminated and with the intervention of the Deputy Commissioner, Kinnaur their services were retained on 19-8-2010.

4. It is further averred that the respondents by colorable exercise of powers have terminated the services of the petitioner in gross violation of the provisions of sections 25-F, 25-G and 25-H of the Act. The respondent No. 1 being model employer cannot be expected to act in the manner and fashion in which they have dealt with the case of the petitioner. Due to the acts of omission and commission on the part of the respondents, the right to livelihood of the petitioner has been taken away, which is highly illegal and bad in the eyes of law. The right of life under Article 21 of the Constitution of India is being snatched by the respondent by resorting to illegal means. The petitioner has raised demand notice and served the same upon the respondent.

5. The following prayer clause has been appended, in the footnote of the petition, which reads as under:

“In view of the aforementioned submissions, it is most respectfully prayed that present petition may kindly be allowed with the following relief(s):

- (i) The respondent company may kindly be directed to re-engage the petitioner in service as supervisor at the same place where he was working prior to his oral illegal termination.
- (ii) The respondent may kindly be directed to grant all consequential benefits to the petitioner such as seniority, arrears of back-wages etc.”

6. The lis was resisted and contested by respondent No.1 by filing written reply wherein preliminary objections of maintainability and the petitioner is contract employee engaged by the respondent company have been raised.

7. On merits, it is submitted that the services of the petitioner were engaged for specific time period through contractors to whom work order for providing manpower service in the project was awarded for a specific period throughout the year. The work order was awarded for outsourcing various job/works including data entry/attending/serving in the field and office. The onus to engage the workers lies on the contractors. The answering respondent has nothing to do with the employment of the petitioner. The petitioner was the employee of contractor and deployed with HPPCL on outsource basis through contractor. The requirement of data entry/attending/security services from the local contractor had shrunk in the year 2016 due to completion of construction work of Kashang Hydro Electric Project Stage-1. The services of the petitioner along-with other eleven workers were not terminated by the respondent company, however, their services were hired by M/s HPPCL on contract basis. It is therefore prayed that in view of the submission made hereinabove, the claim petition of the petitioner may kindly be dismissed in the interest of law and justice and justice be done.

8. The respondent No. 2 *i.e.* Shri Praveen Kumar, Contractor has been duly served in accordance with law but he has failed to appear before this Court, hence, vide order dated 10.7.2018, he was proceeded against *ex-parte*.

9. Reply on behalf of respondent No. 3 was filed wherein preliminary objections qua the petitioner not come to the Court with clean hand and maintainability have been taken. On merits, it is submitted that the workman has never been engaged by the respondent No. 3, hence, there is no question of illegal termination of the services of the petitioner *w.e.f.* 30-6-2016. It is therefore prayed that the petition may kindly be dismissed.

10. While filing rejoinder, the petitioner controverted the averments made thereto in the replies filed by respondent No. 1 and 3, and reaffirmed and reiterated those in the petition.

11. On elucidating the pleading of parties, the following issues were struck down for its final determination *vide* Court order dated 30-05-2019 :—

1. Whether the termination of the petitioner is violative of the provisions of section 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 as alleged. If so, to what relief the petitioner is entitled to? . . .*OPP.*
2. Whether the reference is not maintainable as alleged. If so its effects thereto? . . .*OPR.*
3. Whether the services of the petitioner was hired through a contractor and he was not the employee of respondent no.1 as alleged. If so its effect thereto? . . .*OPR.*
4. Relief

12. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

13. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

14. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue No. 1	Yes. Entitled to lump sum compensation of ₹ 70,000/-. (₹ Seventy Thousand only)
Issue No. 2	No
Issue No. 3	Yes
Relief	Reference is answered in affirmative, as per operative part of award.

REASONS FOR FINDINGS

Issues No.1 to 3 :

15. All these issues are intermingled and inter connected, as mutually existed and required the common appreciation of evidence, being taken up together for the purpose of their determination and adjudication.

16. To substantiate his case, the petitioner namely Shri Cherring Giachho appeared into the witness dock as (PW-1) to depose that he was engaged as supervisor on 7-7-2010 in project run by respondent No. 1 at Reckong Peo. He continued as such till 30-6-2016 and his services were dispensed with after 30-6-2016 orally without issuing any notice. He approached the respondent for his re-engagement but they refused to give him any work. After his illegal termination, six persons had been engaged by the respondent as attendants. The respondent had also engaged electricians and other tradesmen. Earlier in 2010, the respondent had terminated their services and they had been re-engaged after the respondents entered into an agreement with the representatives of the village in the presence of the Deputy Commissioner *vide* Mark P-1. Their land also been acquired for the project and as such he fall under the category of beneficiaries and the respondent had illegally terminated his services. He prayed that he be re-engaged with all consequential benefits including back-wages. He has placed on record the detail of the outsourced manpower as received under RTI Act, Mark A-2 and the application made by the 14 terminated workers in the year 2010 Mark A-3.

17. In cross-examination, on behalf of respondent No. 1, he admitted that initially he was not engaged with the respondent No. 1. He further admitted that he was not issued any appointment letter by respondent No. 1 nor any I card was issued by them. He denied that he was never working with the HPPCL and he had been engaged through a contractor. He admitted that his name is not reflected in (PW-2/A). He admitted that he have no documents to show that his attendance was marked with the HPPCL. He denied that he was an employee of respondent No. 3. He also admitted that he has not placed on record anything to show that he was a beneficiary. When cross-examined on behalf of respondent No. 3, he admitted that he was working with respondent No. 3 and he was engaged by respondent No. 3. He further admitted that the respondent No. 3 had never engaged him. He also admitted that his services were terminated by respondent No. 1. He admitted that his salary was paid by respondent No. 3.

18. Shri Lobha Singh, Clerk in the office of Deputy Commissioner, Kinnaur has appeared into the witness box as (PW-2) and proved on record agreement (PW-2/A). In cross-examination on behalf of respondent No.1, he admitted that (PW-2/A) does not reflect that the petitioner was privy to the terms of the agreement and his name is not reflected in (PW-2/A). When cross-examined on behalf of respondent No. 3, he admitted that the name of the contractor is also not mentioned in (PW-2/A) nor it bears his signatures.

19. PW-3 Shri Man Chand, President of Kashang Pariyojna Prabhavit Sabha, Village Pangi has deposed that the agreement entered between the HPPCL and the representatives of Pariyojna Prabhavit Sabha, Village Pangi was in respect of 14 workers terminated by the HPPCL which included the petitioner and (PW-2/A) bears his signatures as the President of the Sabha. In cross-examination on behalf of respondent No. 1, he admitted that (PW-2/A) does not bears the name of the petitioner. He denied that the HPCL had re-engaged the petitioner after the agreement.

20. In order to rebut, the respondent No.1 examined one Shri Mahender Kumar, General Manager, Civil as (RW-1), who tendered in evidence his affidavit (RW-1/A) wherein he reiterated almost all the averments as made in the reply. He also tendered into evidence letter dated 31-3-2008 (RW-1/B), tender dated 31-3-2008 (RW-1/C), letter dated 7-11-2008 (RW-1/D), work order dated 1-1-2008 (RW-1/E), conditions (RW-1/F), work order dated 27-12-2008 (RW-1/G), conditions (RW-1/H), letter dated 2-3-2009 (RW-1/J), work order dated 2-3-2009 (RW-1/K), conditions (RW-1/L), work order dated 31-3-2009 (RW-1/M), conditions (RW-1/N), letter dated 1-12-2009 (RW-1/O), check list (RW-1/P), work order dated 1-12-2009 (RW-1/Q), conditions (RW-1/R), letter dated 30-9-2011 (RW-1/S), work order dated 30-9-2011 (RW-1/T), conditions (RW-1/U), letter dated 27-5-2014 (RW-1/V), work order dated 19-9-2011 (RW-1/W), letter dated 13-3-2011 (RW-1/X), letter dated 20-9-2012 (RW-1/Y), work order dated 20-9-2012 (RW-1/Z), letter dated 31-12-2012 (RW-1/AA), work order dated 31-12-2012 (RW-1/AB), letter dated 22-9-2014 (RW-1/AC), letter dated 30-3-2015 (RW-1/AD), work order dated 30-3-2015 (RW-1/AE), letter dated 31-3-2016 (RW-1/AF), work order dated 31-3-2016 (RW-1/AG), letter dated 11-5-2016 (RW-1/AH), work order dated 11-5-2016 (RW-1/AJ), work order dated 31-3-2016 (RW-1/AK) and work order dated 31-3-2016 (RW-1/AL).

21. In cross-examination, on behalf of petitioner he denied that the petitioner worked as supervisor in their project. He denied that the petitioner was terminated in the year, 2010. He admitted that there was a compromise effected between the parties before the Deputy Commissioner, Kinnaur on 7-7-2010 that the services of the petitioner shall be reinstated. He admitted that the land of the petitioner was acquired for setting up of the project. He denied that the petitioner had filed complaint to them for not deducting the EPF. When cross-examined on behalf of respondent No. 3, he admitted that the petitioners were working with the respondent since 2010. He further admitted that as per the work orders the nature of work is computer operator.

22. Shri Arvind Negi, Advocate for respondent No. 3 *vide* his separate statement dated 23-3-2022 has stated that he does not want to lead any evidence *i.e.* oral and documentary on behalf of the respondent No. 3.

23. This is the entire oral as well as documentary evidence led from the side of the parties.

24. Shri Vinod Sharma, Learned counsel for the petitioner has contended with all vehemence that the petitioner was engaged as supervisor by respondent No. 1 in the year 2010 and his services were illegally terminated by the respondent No. 1 by an oral dismissal order in the year 2016. Along-with the petitioner as many as eleven other supervisors and two chowkidars were also terminated. The matter was reconciled and with the intervention of the Deputy Commissioner, Kinnaur, their services were re-engaged. He has also argued that the termination of the services of the petitioner is in violation of the salient provision of the Act as well as Articles 14,16 and 21 of the Constitution of India.

25. *Per contra*, Shri Manoj Chauhan, Ld. Counsel for the respondent No. 1 argued that there exists no employee-employer relationship between petitioner and respondent No. 1. He further argued that the petitioner was never engaged by the respondent No. 1 and no appointment letter has been issued to him and even no identity card has been placed on record by him. The petitioner has also failed to place on record the statement of account showing the salary allegedly to be paid by respondent No. 1. No documentary proof showing the contribution towards EPF and ESI has been placed on record. The petitioner has alleged that he was engaged as supervisor by the respondent No. 1, whereas the work order has been issued for data entry operator. The petitioner was the employee of the contractor, who deputed the petitioner with HPPCL. He prayed that the claim petition may kindly be dismissed.

26. Shri Arvind Negi, Ld. Counsel for the respondent No. 3, has contended that the petitioner neither pleaded nor proved on record that he was engaged by respondent No. 3. As a matter of fact, the petitioner was engaged by HPPCL. The petitioner has miserably failed to prove that he was the employee of respondent no.3. He also prayed for the dismissal of the claim petition.

27. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the petitioner, as well Learned Counsel for the respondents No. 1 & 3 and have also scrutinized the entire case record with minute care, caution and circumspection.

28. Admittedly, the petitioner by way of placing on record oral and documentary proof had tried to established on record to prove that the petitioner has been engaged and working with the respondent No. 1 till the time of his termination. The respondent No. 1 *i.e.* Kashang Hydro Electric Project under HPPCL had engaged the services of the petitioner who worked there for six years *i.e.* 2010 to 2016. However, the petitioner himself deposed that Kashang Hydroelectric Project had engaged his services, in the very opening line of his cross-examination. According to him he was engaged by HPPCL. The respondent no.1 had issued the work orders inviting the job through contractors. However, the petitioner again twisted the fact by deposing that he was working with respondent No. 1 and engaged by him. He has also admitted that there were many contractors registered with HPPCL.

29. As a matter of fact, the present reference has been sent by the appropriate government qua the termination of the services of the petitioner by the respondents No.1 to 3 w.e.f. 1-7-2016, without complying with the provisions of the Act, the petitioner having been engaged as a supervisor by the principal employer i.e. Kashang Hydro Electric Project, HPPCL through the contractors, on outsource basis namely Shri Praveen Kumar and Bharat Lal contractors (Respondents No. 2 & 3). Thus, it is abundantly clear on record that the matter in controversy has been narrowed down in a short compass that whether the respondent No. 1, being principal employer had followed the basic and cardinal principles envisaged under the Act while terminating the services of the petitioner or not? It has been specifically pleaded from the side of the respondent No. 1 that the petitioner had been engaged for a specific time period through the contractor to which the allocation of work order has been issued for providing the manpower service in the Project, being awarded for a specific period throughout the year. As a matter of fact, the work order for outsourcing various works including data entry is awarded in the beginning of any financial year considering the various service by flouting short term notice with the prior approval of the competent authority. The services of the petitioner were also outsourced through local contractors, who deployed the petitioner as per requirement, as such, the onus to deploying the manpower lies with the contractor/agency as per the terms and conditions of the contract. Initially, the petitioner was an employee of the contractor and was deployed with HPPCL on outsource basis. In fact, the petitioner has also admitted in his cross-examination that his services were not at all engaged by Kashang Hydro Electric Project or HPPCL. Though, he has tried to improve his version by stating that he was engaged and terminated by respondent No. 1 but it is merely an afterthought expression and cannot replace the earlier version as deposed by him in his cross-examination.

30. Verily, much stress has been placed on record from the side of the petitioner to the agreement (PW-2/A), executed between the parties *i.e.* the representatives of HPPCL, the representatives Pariyojna Prabhavit Sabha, Village Pangi (effected community) before the Deputy Commissioner, Kinnaur on 7-7-2010 wherein it has been amicably agreed by all the concerned parties that 14 workers terminated by M/s HPPCL shall be provided livelihood by HPPCL till they got employment through HPPCL or some other agency. Seven new recruitments from Pangi village shall be done through M/s HCC Ltd., within 0-7 days from the date of call off strike subject to permission by the Hon'ble High Court. It is contended before me that the petitioner and eleven other workers were terminated by the respondent No.1 and with the intervention of Deputy Commissioner, Kinnaur, their services were restored on 19-8-2010 and a compromise was effected. Though, the petitioner has miserably failed to establish on record that initially he was engaged by respondent No.1 *i.e.* HPPCL. Neither any appointment letter nor any termination letter has been placed on record. From the recital of the agreement dated 7-7-2010, executed before the Deputy Commissioner, Kinnaur. There was an agreement executed between the parties that the representatives of Project effected members shall be provided the livelihood by HPPCL. Such a recital shall not give any right to the petitioner that he was engaged/appointed by respondent No. 1. More so, the recital of agreement (PW-2/A) dated 7-7-2010, shall not come in any way to substantiate the plea raised from the side of the petitioner. The initial burden lies on the petitioner to prove that he was not engaged by the contractors but by HPPCL.

31. Now, the question which arises for determination before this Tribunal that what relevancy, authenticity and legality attached to the writing dated 7-7-2010 (PW-2/A). All the recital made thereto in such writing amounts to a stop gap arrangement whereby it was resolved by the representatives of all the parties concerned to reconcile the matter. However, providing of livelihood by the respondent No. 1 to the workers, who were terminated by outsourcing agency/contractor, shall providing or offering any appointment/engagement to the petitioner with the respondent No. 1. It is quite apparent on the face of the record that the petitioner was not engaged by the respondent no.1 directly rather he was engaged on outsource basis through contractor.

32. The next question arise before me that whether the termination of the services of the petitioner *w.e.f.* 1-7-2016, is violative of the provisions of the Act. Amongst arraying both the contractors, as the contesting respondents, one of them while contesting the claim petition averred that the petitioner has neither been engaged by the replying respondent nor terminated his services. The petitioner was engaged by the respondent No. 1. No legal or vested rights of the petitioner have been infringed by the respondent No. 3 in any manner. However, the petitioner as (PW-1) during cross-examination by respondent No. 3 admitted that he was working with respondent No. 1 and he was engaged by respondent No. 1. He was not engaged by respondent No. 3. Both the contractors are not known to him personally. He has not claimed any particular relief against contractors. All his service conditions were being maintained and supervised by respondent No. 1. All the contentions raised at bar are devoid of merits. In my humble opinion, the petitioner miserably failed to lead any cogent, clear and clinching evidence to establish on record that he was engaged by respondent No. 1. In any case, the petitioner has also failed to produce on record any documentary proof regarding his engagement, oral termination, service conditions and over all supervision and control by respondent No. 1. Mere oral deposition in the absence of any cogent documentary proof assumes no significance in the eyes of law. Furthermore, the averments made thereto in the reply filed by respondent No. 1 are fully corroborated by the respondent No. 1 witness Shri Mahender Kumar General Manager, Civil, HPPCL (RW-1), wherein he has categorically stated that the entire dues to the petitioner is shown to have been paid by the respondent. The petitioner was never engaged by respondent No. 1 in any field of work/job at any point of time. The services of the petitioner were engaged on outsource basis through the contractor to whom the respondent No. 1 has awarded the work orders from time to time. The petitioner was the employee of contractor and

deployed with HPPCL, on outsource through contractors. Undoubtedly, there was an agreement executed before the Deputy Commissioner, Kinnaur on 7-7-2010 whereby the representatives of project effected members, representatives of HPCL and representatives of HCCL were signatory to the said writings. Simple, on the score that the officers of the HPPCL put their signatures to the said writing shall not provide any employment/engagement to the petitioner. The respondent witness categorically admitted that the petitioner filed complaint before the Deputy Commissioner, Kinnaur. The EPF of the petitioner was deducted by the contractor. He also admitted that the agreement bears the signatures of General Manager, Deputy General Manager of HPPCL respectively being representatives of HPPCL. However, he feigned ignorance that the petitioner was engaged as operator/supervisor. He admitted that after the issuance of the work orders, the same has been accepted by the contractors. Admittedly, the respondent No. 1 being principal employer had engaged the services of the petitioner through the contractors though there is a denial on the part of the contractors. It is now fairly established that the services of the petitioner were engaged by the contractors and deployed with HPPCL. It is also admitted position on record that the contractors while terminating the services of the petitioner is to comply with the requirement of the law. The very action on the part of the respondents while terminating the services of the petitioner has to fall within the four corners of the definition of "retrenchment" as envisaged under section 2-oo (bb) of the Act, hence, the termination of the services of the petitioner is held to be bad and nonest in the eyes of law. Since, the petitioner has completed the requirement of days as fixed by the Government for Tribal area, hence, he is also entitled for the protection of section 25-F of the Act. It is also admitted fact that before retrenching the services of the petitioner neither any notice had been issued nor any compensation has been paid. Therefore, in view of the above discussion, I am satisfied that the workman was terminated illegally and unjustifiably without complying with section 25-F of the Act, which provides as under:

"No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until :

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government for such authority as may be specified by the appropriate Government by notification in the Official Gazette".

33. So, in view of this enabling provision of the act, no workman employed in any industry, who has been in "continuous service" for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25-B of the Act, which in its material part reads:

"25B. Definition of continuous service. For the purposes of this Chapter,—

- (1) *a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal,*

or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) *where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—*

(a) *for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—*

(i) *one hundred and ninety days in the case of a workman employed below ground in a mine; and*

(ii) *two hundred and forty days, in any other case....”*

34. Since, the petitioner is proved to have completed more than 180 days (as applicable in Tribal area) during the period of twelve calendar months in the preceding year from the date of his retrenchment, his services could not have been terminated unless he was served with one month's mandatory notice and paid the retrenchment compensation, as envisaged under Section 25-F of the Act. Admittedly, the provisions of Section 25-F of the Act were not followed or complied with by the respondent in the latter and spirit. The respondent did not pay the retrenchment compensation to the petitioner, nor had issued any requisite notice to the petitioner.

35. In the back-drop of aforesaid events, it is held that the termination of the petitioner was in violation of the provisions of Sections 25-B and 25-F of the Act. The termination is held to be illegal, unlawful and unjustified.

36. Now, the question arises as to what relief, the workman is entitled to? Their Lordships of Hon'ble Supreme Court in an authority reported as The Workmen of M/s Firestone Tyre & Rubber Co. of India (Pvt.) Ltd. etc. vs. The Management & Ors. 1973 (1) SCC 813, Hon'ble Supreme Court observed as under:

"10. In a particular case, after setting aside the order of dismissal, whether a workman should be reinstated or paid compensation is, as held by this Court in The Management of Panitole Tea Estate Vs. The workmen (1971) 1 SCC 742 within the judicial decision of a Labour Court of Tribunal."

37. Similarly, Their Lordship of Hon'ble Delhi High Court in another authority reported as Nehru Yuva Kendra Sangathan Vs. Union of India & Ors. 2000 IV AD (Delhi) 709, Hon'ble Delhi High Court dealt with the question of reinstatement and back wages and observed as under:

"The decision of the Supreme Court rendered in the 1970s and 1980s that reinstatement with back wages was the norm in cases where the termination of the services of the workman was held inoperative. The decisions rendered in the 1990s, including the decision of the Constitution Bench in the Punjab Land Development and Reclamation Corporation Ltd., Chandigarh seem to suggest that compensation in lieu of reinstatement and back wages is now the norm. In any case, since I am bound to follow the decision of the Constitution Bench, I, therefore, conclude that reinstatement is not the inevitable consequence of quashing an order of termination; compensation can be awarded in lieu of reinstatement and back wages."

38. To combat with, I am persuaded to award compensation in lieu of reinstatement and back wages to the workman.

39. Similarly, Their Lordships of Hon'ble Supreme Court in another authority reported as **M.L. Binjolkar Vs. State of Madhya Pradesh, 2005 VI (S.C.) 413**, Hon'ble Supreme Court observed in paragraph 7 as under :

"Though the High Court has not specifically dealt with the question as to what would be the appropriate quantum, keeping in view the law laid down by this Court in various cases e.g. Hindustan Motors Ltd. Vs. Tapanj Kumar Bhattarcharya & Anr. (2002 (6) SCC 41), Rajendra Prasad Arya Vs. State of Bihar (200 (9) SCC 514), Sonapat Cooperative Sugar Mills Ltd. Vs. Ajit Singh (2005 (3) SCC 232), Haryana State Cooperative Land Development Bank Vs. Neelam (2005 (5) SCC 91), Manager, Reserve Bank of India, Bangalore Vs. S. Mani & Ors. (2005 (5) SCC 100) and Allahabad Jal Sansthan Vs. Daya Shankar Rai & Anr. (2005 (5) SCC 124), we do not find any scope for interference. The earlier view was that whenever there is interference with the order of termination or retirement, full back wages were the natural corollary. It has been laid down in the cases noted above that it would depend upon several factors and the court has to weigh the pros and cons of each case and to take a pragmatic view."

40. Their Lordship of Hon'ble Supreme Court in another authority reported as **U.P. State Brassware Corporation Limited and another Vs. Uday Narain Pandey, (2006) 1 SCC 479**, wherein the Hon'ble Supreme Court, observed as under:

"A Division Bench of this Court in **M.L. Binjolkar v. State of M.P. (2005) 6 SCC 224**, referring to a large number of decisions, held as under:

"The earlier view was that whenever there is interference with the order of termination or retirement, full back wages were the natural corollary. It has been laid down in the cases noted above that it would depend upon several factors and the Court has to weigh the pros and cons of each case and to take a pragmatic view."

41. In the exposition of law enumerated hereinbefore, now, I would like to examine the merits of the case.

42. In the instant case, the petitioner was engaged by the respondent No. 1 through contractors. The petitioner had worked in the capacity of workman. Since, the services of the petitioner were not directly engaged by the respondent No. 1, hence, the only remedy available with this Tribunal is to award compensation amount to the petitioner in lump sum amount.

43. Recent developments, particularly the trends particularly much after the year 2007 shows that grant of compensation in lieu of reinstatement has gained precedence, more particularly, where the services of the workmen have been terminated because of procedural defects. In the case in hand too the termination is found to be illegal in view of the provisions Act, both ends of justice would thus be met, in case the petitioner is granted compensation in lieu of reinstatement thereof. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court titled as **Bharat Sanchar Nigam Ltd. Vs. Bhurumal (2014) 7 SCC 177** and further reiterated lately in **P. Karupaiah (dead) through Legal Representatives Vs. General Manager, Thruuvalluvar Transport Corporation Ltd. (2018) 12 SCC 663** and **Rashtrasant Tukdoji Maharaj Technical Education Samnsta, Nagpur Vs. Prashant Manikrao Kubitkar (2018) 12 SCC 294**.

44. For the foregoing reasons and keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above, the petitioner is held entitled for a lump sum compensation amount of ₹ 70,000/- (₹ Seventy Thousand only) as lump sum compensation from the respondents, who are jointly and severally liable to pay the awarded amount to the petitioner. All these issues are decided accordingly.

Relief :

45. As a sequel to my above discussion and findings on issues No. 1 to 3, the claim of the petitioner succeeds and is hereby allowed and the petitioner is awarded lump sum compensation of **₹ 70,000/- (Rupees Seventy Thousand only) to the workman, to be paid by the respondents jointly and severally within two months from the date of announcement** of the award, failing which interest at the rate of 9% (nine percent) would be payable by the respondent society to the workman. It is expressly made clear that apart from lump sum compensation, **the petitioner is entitled for all his legal dues i.e. gratuity, leave encashment, EPF, ESI etc.**, admissible if any, in accordance with law. The reference is disposed off in the aforesaid terms. Let a copy of this award be communicated to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 1st day of June, 2022.

Sd/-
(RAJESH TOMER),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

**IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 09 of 2018

Instituted on : 30-12-2017

Decided on : 01-06-2022

Dev Raj s/o Shri Kushuk Pal, r/o Village and Post Office Pangri, Tehsil Kalpa, District Kinnaur, H.P. . *Petitioner.*

VERSUS

1. The General Manager, Kashang Hydro Electric Project, HPPCL, Knifed Building, IKHP, Reckong Peo, District Kinnaur, H.P.

2. Praveen Kumar, Contractor, VPO Pangri, Tehsil Kalpa, District Kinnaur, H.P.

3. Bharat Lal, Contractor, VPO Pangri, Tehsil Kalpa, District Kinnaur, H.P. . *Respondents.*

Reference petition under section 10 of the Industrial Disputes Act

For the petitioner	: Shri Vinod Sharma, Adv.
For the Respondent No. 1	: Shri Manoj Chauhan, Adv.
For the Respondent No. 2	: Ex-parte.
For the Respondent No. 3	: Shri Arvind Negi, Adv.

AWARD

The following reference petition has been, received from the Appropriate Government, *vide* notification dated 31-10-2017, under section 10 of the Industrial Disputes Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, as under:

“Whether termination of services of Shri Dev Raj s/o Shri Kushuk Pal r/o Village and Post Office, Pangti, Tehsil Kalpa, District Kinnaur, H.P. by (i) Praveen Kumar, Contractor, VPO Pangti, Tehsil Kalpa, District Kinnaur, H.P. (ii) Bharat Lal, Contractor, VPO Pangti, Tehsil Kalpa, District Kinnaur, H.P. (iii) The General Manager, Kashang Hydro Electric Project, HPPCL, Knifed Building, IKHP, Reckong Peo, District Kinnaur, H.P. (Principal Employer) *w.e.f.* 1-7-2016 without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. To the fore, Shri Dev Raj (hereinafter to be referred as the petitioner) has instituted the claim petition against the General Manager, Kashang Hydro Electric Project, HPPCL (**hereinafter to be referred as respondent No. 1**), Shri Praveen Kumar Contractor (**hereinafter to be referred as the respondent No. 2**) and Shri Bharat Lal, Contractor (**hereinafter to be referred as the respondent No. 3**) under the provisions of the Act.

3. Key facts necessary for the disposal of the present reference petition are thus that the petitioner was engaged as supervisor for six years *w.e.f.* 8-7-2010 and remained posted as such till 30-6-2016. On 01-07-2016, the respondent company has illegally and without any notice has terminated the services of the petitioner. The oral termination of the services of the petitioner lead him to approach the respondents for his re-engagement into services but to no avail. Along-with the petitioner the services of eleven supervisors and two chowkidars have also been terminated. Earlier also on 19-8-2010, the services of the petitioner and eleven others workers were terminated and with the intervention of the Deputy Commissioner, Kinnaur their services were retained on 19-8-2010.

4. It is further averred that the respondents by colorable exercise of powers have terminated the services of the petitioner in gross violation of the provisions of sections 25-F, 25-G and 25-H of the Act. The respondent No. 1 being model employer cannot be expected to act in the manner and fashion in which they have dealt with the case of the petitioner. Due to the acts of omission and commission on the part of the respondents, the right to livelihood of the petitioner has been taken away, which is highly illegal and bad in the eyes of law. The right of life under Article 21 of the Constitution of India is being snatched by the respondent by resorting to illegal means. The petitioner has raised demand notice and served the same upon the respondent.

5. The following prayer clause has been appended, in the footnote of the petition, which reads as under:

“In view of the aforementioned submissions, it is most respectfully prayed that present petition may kindly be allowed with the following relief(s):

- (i) The respondent company may kindly be directed to re-engage the petitioner in service as supervisor at the same place where he was working prior to his oral illegal termination.
- (ii) The respondent may kindly be directed to grant all consequential benefits to the petitioner such as seniority, arrears of back-wages etc.”

6. The lis was resisted and contested by respondent No.1 by filing written reply wherein preliminary objections of maintainability and the petitioner is contract employee engaged by the respondent company have been raised.

7. On merits, it is submitted that the services of the petitioner were engaged for specific time period through contractors to whom work order for providing manpower service in the project was awarded for a specific period throughout the year. The work order was awarded for outsourcing various job/works including data entry/attending/serving in the field and office. The onus to engage the workers lies on the contractors. The answering respondent has nothing to do with the employment of the petitioner. The petitioner was the employee of contractor and deployed with HPPCL on outsource basis through contractor. The requirement of data entry/attending/security services from the local contractor had shrunk in the year 2016 due to completion of construction work of Kashang Hydro Electric Project Stage-1. The services of the petitioner along-with other eleven workers were not terminated by the respondent company, however, their services were hired by M/s HPPCL on contract basis. It is therefore prayed that in view of the submission made hereinabove, the claim petition of the petitioner may kindly be dismissed in the interest of law and justice and justice be done.

8. The respondent No. 2 *i.e.* Shri Praveen Kumar, Contractor has been duly served in accordance with law but he has failed to appear before this Court, hence, *vide* order dated 10-7-2018, he was proceeded against *ex-parte*.

9. Reply on behalf of respondent No. 3 was filed wherein preliminary objections qua the petitioner not come to the Court with clean hand and maintainability have been taken. On merits, it is submitted that the workman has never been engaged by the respondent No. 3, hence, there is no question of illegal termination of the services of the petitioner *w.e.f.* 30-6-2016. It is therefore prayed that the petition may kindly be dismissed.

10. While filing rejoinder, the petitioner controverted the averments made thereto in the replies filed by respondent No. 1 and 3, and reaffirmed and reiterated those in the petition.

11. On elucidating the pleading of parties, the following issues were struck down for its final determination *vide* Court order dated 30-05-2019.

1. Whether the termination of the petitioner is violative of the provisions of section 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 as alleged. If so, to what relief the petitioner is entitled to? . . .*OPP.*
2. Whether the reference is not maintainable as alleged. If so its effects thereto? . . .*OPR.*
3. Whether the services of the petitioner was hired through a contractor and he was not the employee of respondent No. 1 as alleged. If so its effect thereto? . . .*OPR.*

4. Relief

12. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

13. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

14. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue No. 1	Yes. Entitled to lump sum compensation of ₹ 70,000/- (₹ Seventy Thousand only).
Issue No. 2	No
Issue No. 3	Yes
Relief	Reference is answered in affirmative, as per operative part of award.

REASONS FOR FINDINGS*Issues No.1 to 3 :*

15. All these issues are intermingled and inter connected, as mutually existed and required the common appreciation of evidence, being taken up together for the purpose of their determination and adjudication.

16. To substantiate his case, the petitioner namely Shri Dev Raj appeared into the witness dock as (PW-1) to depose that he was engaged as supervisor on 7-7-2010 in project run by respondent No. 1 at Reckong Peo. He continued as such till 30-6-2016 and his services were dispensed with after 30-6-2016 orally without issuing any notice. He approached the respondent for his reengagement but they refused to give him any work. After his illegal termination, six persons had been engaged by the respondent as attendants. The respondent had also engaged electricians and other tradesmen. Earlier in 2010, the respondent had terminated their services and they had been re-engaged after the respondents entered into an agreement with the representatives of the village in the presence of the Deputy Commissioner *vide* Mark P-1. Their land also been acquired for the project and as such he fall under the category of beneficiaries and the respondent had illegally terminated his services. He prayed that he be re-engaged with all consequential benefits including back-wages. He has placed on record the detail of the outsourced manpower as received under RTI Act, Mark A-2 and the application made by the 14 terminated workers in the year 2010 Mark A-3.

17. In cross-examination, on behalf of respondent No. 1, he admitted that initially he was not engaged with the respondent No. 1. He further admitted that he was not issued any appointment letter by respondent no.1 nor any I card was issued by them. He denied that he was never working with the HPPCL and he had been engaged through a contractor. He admitted that his name is not reflected in (PW-2/A). He admitted that he have no documents to show that his attendance was marked with the HPPCL. He denied that he was an employee of respondent No. 3. He also admitted that he has not placed on record anything to show that he was a beneficiary. When cross-examined on behalf of respondent No. 3, he admitted that he was working with respondent No. 3 and he was

engaged by respondent No. 3. He further admitted that the respondent No. 3 had never engaged him. He also admitted that his services were terminated by respondent No. 1. He admitted that his salary was paid by respondent No. 3.

18. Shri Lobha Singh, Clerk in the office of Deputy Commissioner, Kinnaur has appeared into the witness box as (PW-2) and proved on record agreement (PW-2/A). In cross-examination on behalf of respondent No. 1, he admitted that (PW-2/A) does not reflect that the petitioner was privy to the terms of the agreement and his name is not reflected in (PW-2/A). When cross-examined on behalf of respondent No. 3, he admitted that the name of the contractor is also not mentioned in (PW-2/A) nor it bears his signatures.

19. PW-3 Shri Man Chand, President of Kashang Pariyojna Prabhavit Sabha, Village Pangi has deposed that the agreement entered between the HPPCL and the representatives of Pariyojna Prabhavit Sabha, Village Pangi was in respect of 14 workers terminated by the HPPCL which included the petitioner and (PW-2/A) bears his signatures as the President of the Sabha. In cross-examination on behalf of respondent No. 1, he admitted that (PW-2/A) does not bears the name of the petitioner. He denied that the HPCL had re-engaged the petitioner after the agreement.

20. In order to rebut, the respondent No.1 examined one Shri Mahender Kumar, General Manager, Civil as (RW-1), who tendered in evidence his affidavit (RW-1/A) wherein he reiterated almost all the averments as made in the reply. He also tendered into evidence letter dated 31-3-2008 (RW-1/B), tender dated 31-3-2008 (RW-1/C), letter dated 7-11-2008 (RW-1/D), work order dated 1-1-2008 (RW-1/E), conditions (RW-1/F), work order dated 27-12-2008 (RW-1/G), conditions (RW-1/H), letter dated 2-3-2009 (RW-1/J), work order dated 2-3-2009 (RW-1/K), conditions (RW-1/L), work order dated 31-3-2009 (RW-1/M), conditions (RW-1/N), letter dated 1-12-2009 (RW-1/O), check list (RW-1/P), work order dated 1-12-2009 (RW-1/Q), conditions (RW-1/R), letter dated 30-9-2011 (RW-1/S), work order dated 30-9-2011 (RW-1/T), conditions (RW-1/U), letter dated 27.5.2014 (RW-1/V), work order dated 19.9.2011 (RW-1/W), letter dated 13.3.2011 (RW-1/X), letter dated 20.9.2012 (RW-1/Y), work order dated 20-9-2012 (RW-1/Z), letter dated 31-12-2012 (RW-1/AA), work order dated 31-12-2012 (RW-1/AB), letter dated 22-9-2014 (RW-1/AC), letter dated 30-3-2015 (RW-1/AD), work order dated 30-3-2015 (RW-1/AE), letter dated 31-3-2016 (RW-1/AF), work order dated 31-3-2016 (RW-1/AG), letter dated 11-5-2016 (RW-1/AH), work order dated 11-5-2016 (RW-1/AJ), work order dated 31-3-2016 (RW-1/AK) and work order dated 31-3-2016 (RW-1/AL).

21. In cross-examination, on behalf of petitioner he denied that the petitioner worked as supervisor in their project. He denied that the petitioner was terminated in the year, 2010. He admitted that there was a compromise effected between the parties before the Deputy Commissioner, Kinnaur on 7-7-2010 that the services of the petitioner shall be reinstated. He admitted that the land of the petitioner was acquired for setting up of the project. He denied that the petitioner had filed complaint to them for not deducting the EPF. When cross-examined on behalf of respondent No. 3, he admitted that the petitioners were working with the respondent since 2010. He further admitted that as per the work orders the nature of work is computer operator.

22. Shri Arvind Negi, Advocate for respondent No. 3 *vide* his separate statement dated 23-3-2022 has stated that he does not want to lead any evidence *i.e.* oral and documentary on behalf of the respondent No. 3.

23. This is the entire oral as well as documentary evidence led from the side of the parties.

24. Shri Vinod Sharma, Learned counsel for the petitioner has contended with all vehemence that the petitioner was engaged as supervisor by respondent No.1 in the year 2010 and

his services were illegally terminated by the respondent No. 1 by an oral dismissal order in the year 2016. Along-with the petitioner as many as eleven other supervisors and two chowkidars were also terminated. The matter was reconciled and with the intervention of the Deputy Commissioner, Kinnaur, their services were re-engaged. He has also argued that the termination of the services of the petitioner is in violation of the salient provision of the Act as well as Articles 14,16 and 21 of the Constitution of India.

25. *Per contra*, Shri Manoj Chauhan, Ld. Counsel for the respondent No. 1 argued that there exists no employee-employer relationship between petitioner and respondent No. 1. He further argued that the petitioner was never engaged by the respondent No. 1 and no appointment letter has been issued to him and even no identity card has been placed on record by him. The petitioner has also failed to place on record the statement of account showing the salary allegedly to be paid by respondent no.1. No documentary proof showing the contribution towards EPF and ESI has been placed on record. The petitioner has alleged that he was engaged as supervisor by the respondent no.1, whereas the work order has been issued for data entry operator. The petitioner was the employee of the contractor, who deputed the petitioner with HPPCL. He prayed that the claim petition may kindly be dismissed.

26. Shri Arvind Negi, Ld. Counsel for the respondent No. 3, has contended that the petitioner neither pleaded nor proved on record that he was engaged by respondent No. 3. As a matter of fact, the petitioner was engaged by HPPCL. The petitioner has miserably failed to prove that he was the employee of respondent No. 3. He also prayed for the dismissal of the claim petition.

27. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the petitioner, as well Learned Counsel for the respondents No. 1 & 3 and have also scrutinized the entire case record with minute care, caution and circumspection.

28. Admittedly, the petitioner by way of placing on record oral and documentary proof had tried to established on record to prove that the petitioner has been engaged and working with the respondent No. 1 till the time of his termination. The respondent No.1 *i.e.* Kashang Hydro Electric Project under HPPCL had engaged the services of the petitioner who worked there for six years *i.e.* 2010 to 2016. However, the petitioner himself deposed that Kashang Hydroelectric Project had engaged his services, in the very opening line of his cross-examination. According to him he was engaged by HPPCL. The respondent no.1 had issued the work orders inviting the job through contractors. However, the petitioner again twisted the fact by deposing that he was working with respondent No. 1 and engaged by him. He has also admitted that there were many contractors registered with HPPCL.

29. As a matter of fact, the present reference has been sent by the appropriate government qua the termination of the services of the petitioner by the respondents No. 1 to 3 w.e.f. 1-7-2016, without complying with the provisions of the Act, the petitioner having been engaged as a supervisor by the principal employer i.e. Kashang Hydro Electric Project, HPPCL through the contractors, on outsource basis namely Shri Praveen Kumar and Bharat Lal contractors (Respondents No. 2 & 3). Thus, it is abundantly clear on record that the matter in controversy has been narrowed down in a short compass that whether the respondent No. 1, being principal employer had followed the basic and cardinal principles envisaged under the Act while terminating the services of the petitioner or not? It has been specifically pleaded from the side of the respondent No. 1 that the petitioner had been engaged for a specific time period through the contractor to which the allocation of work order has been issued for providing the manpower service in the Project, being awarded for a specific period throughout the year. As a matter of fact, the work order for outsourcing various works including data entry is awarded in the beginning of any financial

year considering the various service by flouting short term notice with the prior approval of the competent authority. The services of the petitioner were also outsourced through local contractors, who deployed the petitioner as per requirement, as such, the onus to deploying the manpower lies with the contractor/agency as per the terms and conditions of the contract. Initially, the petitioner was an employee of the contractor and was deployed with HPPCL on outsource basis. In fact, the petitioner has also admitted in his cross-examination that his services were not at all engaged by Kashang Hydro Electric Project or HPPCL. Though, he has tried to improve his version by stating that he was engaged and terminated by respondent No. 1 but it is merely an afterthought expression and cannot replace the earlier version as deposed by him in his cross-examination.

30. Verily, much stress has been placed on record from the side of the petitioner to the agreement (PW-2/A), executed between the parties *i.e.* the representatives of HPPCL, the representatives Pariyojna Prabhavit Sabha, Village Pangi (effected community) before the Deputy Commissioner, Kinnaur on 7-7-2010 wherein it has been amicably agreed by all the concerned parties that 14 workers terminated by M/s HPPCL shall be provided livelihood by HPPCL till they got employment through HPPCL or some other agency. Seven new recruitments from Pangi village shall be done through M/s HCC Ltd., within 0-7 days from the date of call off strike subject to permission by the Hon'ble High Court. It is contended before me that the petitioner and eleven other workers were terminated by the respondent No.1 and with the intervention of Deputy Commissioner, Kinnaur, their services were restored on 19-8-2010 and a compromise was effected. Though, the petitioner has miserably failed to establish on record that initially he was engaged by respondent No.1 *i.e.* HPPCL. Neither any appointment letter nor any termination letter has been placed on record. From the recital of the agreement dated 7-7-2010, executed before the Deputy Commissioner, Kinnaur. There was an agreement executed between the parties that the representatives of Project effected members shall be provided the livelihood by HPPCL. Such a recital shall not give any right to the petitioner that he was engaged/appointed by respondent No. 1. More so, the recital of agreement (PW-2/A) dated 7-7-2010, shall not come in any way to substantiate the plea raised from the side of the petitioner. The initial burden lies on the petitioner to prove that he was not engaged by the contractors but by HPPCL.

31. Now, the question which arises for determination before this Tribunal that what relevancy, authenticity and legality attached to the writing dated 7-7-2010 (PW-2/A). All the recital made thereto in such writing amounts to a stop gap arrangement whereby it was resolved by the representatives of all the parties concerned to reconcile the matter. However, providing of livelihood by the respondent No. 1 to the workers, who were terminated by outsourcing agency/contractor, shall providing or offering any appointment/engagement to the petitioner with the respondent No. 1. It is quite apparent on the face of the record that the petitioner was not engaged by the respondent No. 1 directly rather he was engaged on outsource basis through contractor.

32. The next question arise before me that whether the termination of the services of the petitioner *w.e.f.* 1-7-2016, is violative of the provisions of the Act. Amongst arraying both the contractors, as the contesting respondents, one of them while contesting the claim petition averred that the petitioner has neither been engaged by the replying respondent nor terminated his services. The petitioner was engaged by the respondent No. 1. No legal or vested rights of the petitioner have been infringed by the respondent No. 3 in any manner. However, the petitioner as (PW-1) during cross-examination by respondent No.3 admitted that he was working with respondent No. 1 and he was engaged by respondent No. 1. He was not engaged by respondent No. 3. Both the contractors are not known to him personally. He has not claimed any particular relief against contractors. All his service conditions were being maintained and supervised by respondent No. 1. All the contentions raised at bar are devoid of merits. In my humble opinion, the petitioner miserably failed to lead any cogent, clear and clinching evidence to establish on record that he was engaged by

respondent No. 1. In any case, the petitioner has also failed to produce on record any documentary proof regarding his engagement, oral termination, service conditions and over all supervision and control by respondent No. 1. Mere oral deposition in the absence of any cogent documentary proof assumes no significance in the eyes of law. Furthermore, the averments made thereto in the reply filed by respondent No. 1 are fully corroborated by the respondent No. 1 witness Shri Mahender Kumar General Manager, Civil, HPPCL (RW-1), wherein he has categorically stated that the entire dues to the petitioner is shown to have been paid by the respondent. The petitioner was never engaged by respondent No. 1 in any field of work/job at any point of time. The services of the petitioner were engaged on outsource basis through the contractor to whom the respondent No.1 has awarded the work orders from time to time. The petitioner was the employee of contractor and deployed with HPPCL, on outsource through contractors. Undoubtedly, there was an agreement executed before the Deputy Commissioner, Kinnaur on 7-7-2010 whereby the representatives of project effected members, representatives of HPCL and representatives of HCCL were signatory to the said writings. Simple, on the score that the officers of the HPPCL put their signatures to the said writing shall not provide any employment/engagement to the petitioner. The respondent witness categorically admitted that the petitioner filed complaint before the Deputy Commissioner, Kinnaur. The EPF of the petitioner was deducted by the contractor. He also admitted that the agreement bears the signatures of General Manager, Deputy General Manager of HPPCL respectively being representatives of HPPCL. However, he feigned ignorance that the petitioner was engaged as operator/supervisor. He admitted that after the issuance of the work orders, the same has been accepted by the contractors. Admittedly, the respondent No. 1 being principal employer had engaged the services of the petitioner through the contractors though there is a denial on the part of the contractors. It is now fairly established that the services of the petitioner were engaged by the contractors and deployed with HPPCL. It is also admitted position on record that the contractors while terminating the services of the petitioner is to comply with the requirement of the law. The very action on the part of the respondents while terminating the services of the petitioner has to fall within the four corners of the definition of "retrenchment" as envisaged under section 2-oo (bb) of the Act, hence, the termination of the services of the petitioner is held to be bad and nonest in the eyes of law. Since, the petitioner has completed the requirement of days as fixed by the Government for Tribal area, hence, he is also entitled for the protection of section 25-F of the Act. It is also admitted fact that before retrenching the services of the petitioner neither any notice had been issued nor any compensation has been paid. Therefore, in view of the above discussion, I am satisfied that the workman was terminated illegally and unjustifiably without complying with section 25-F of the Act, which provides as under:

"No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until :

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government for such authority as may be specified by the appropriate Government by notification in the Official Gazette".

33. So, in view of this enabling provision of the act, no workman employed in any industry, who has been in "continuous service" for not less than one year, can be retrenched by the

employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25-B of the Act, which in its material part reads:

"25B. Definition of continuous service. For the purposes of this Chapter,—

- (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;*
- (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—*
 - (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—*
 - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and*
 - (ii) two hundred and forty days, in any other case...."*

34. Since, the petitioner is proved to have completed more than 180 days (as applicable in Tribal area) during the period of twelve calendar months in the preceding year from the date of his retrenchment, his services could not have been terminated unless he was served with one month's mandatory notice and paid the retrenchment compensation, as envisaged under Section 25-F of the Act. Admittedly, the provisions of Section 25-F of the Act were not followed or complied with by the respondent in the latter and spirit. The respondent did not pay the retrenchment compensation to the petitioner, nor had issued any requisite notice to the petitioner.

35. In the back-drop of aforesaid events, it is held that the termination of the petitioner was in violation of the provisions of Sections 25-B and 25-F of the Act. The termination is held to be illegal, unlawful and unjustified.

36. Now, the question arises as to what relief, the workman is entitled to? Their Lordships of Hon'ble Supreme Court in an authority reported as The Workmen of **M/s Firestone Tyre & Rubber Co. of India (Pvt.) Ltd. etc. vs. The Management & Ors. 1973 (1) SCC 813**, Hon'ble Supreme Court observed as under:

"10. In a particular case, after setting aside the order of dismissal, whether a workman should be reinstated or paid compensation is, as held by this Court in The Management of Panitole Tea Estate Vs. The workmen (1971) 1 SCC 742 within the judicial decision of a Labour Court of Tribunal."

37. Similarly, Their Lordship of Hon'ble Delhi High Court in another authority reported as **Nehru Yuva Kendra Sangathan Vs. Union of India & Ors. 2000 IV AD (Delhi) 709, Hon'ble Delhi High Court** dealt with the question of reinstatement and back wages and observed as under:

"The decision of the Supreme Court rendered in the 1970s and 1980s that reinstatement with back wages was the norm in cases where the termination of the services of the workman was held inoperative. The decisions rendered in the 1990s, including the decision of the Constitution Bench in the Punjab Land Development and Reclamation Corporation Ltd., Chandigarh seem to suggest that compensation in lieu of reinstatement and back wages is now the norm. In any case, since I am bound to follow the decision of the Constitution Bench, I, therefore, conclude that reinstatement is not the inevitable consequence of quashing an order of termination; compensation can be awarded in lieu of reinstatement and back wages."

38. To combat with, I am persuaded to award compensation in lieu of reinstatement and back wages to the workman.

39. Similarly, Their Lordships of Hon'ble Supreme Court in another authority reported as **M.L. Binjolkar Vs. State of Madhya Pradesh, 2005 VI (S.C.) 413**, Hon'ble Supreme Court observed in paragraph 7 as under :

"Though the High Court has not specifically dealt with the question as to what would be the appropriate quantum, keeping in view the law laid down by this Court in various cases e.g. Hindustan Motors Ltd. Vs. Tapanj Kumar Bhattarcharya & Anr. (2002 (6) SCC 41), Rajendra Prasad Arya Vs. State of Bihar (200 (9) SCC 514), Sonapat Cooperative Sugar Mills Ltd. Vs. Ajit Singh (2005 (3) SCC 232), Haryana State Cooperative Land Development Bank Vs. Neelam (2005 (5) SCC 91), Manager, Reserve Bank of India, Bangalore Vs. S. Mani & Ors. (2005 (5) SCC 100) and Allahabad Jal Sansthan Vs. Daya Shankar Rai & Anr. (2005 (5) SCC 124), we do not find any scope for interference. The earlier view was that whenever there is interference with the order of termination or retirement, full back wages were the natural corollary. It has been laid down in the cases noted above that it would depend upon several factors and the court has to weigh the pros and cons of each case and to take a pragmatic view."

40. Their Lordship of Hon'ble Supreme Court in another authority reported as **U.P. State Brassware Corporation Limited and another Vs. Uday Narain Pandey, (2006) 1 SCC 479**, wherein the Hon'ble Supreme Court, observed as under:

"A Division Bench of this Court in **M.L. Binjolkar v. State of M.P. (2005) 6 SCC 224**, referring to a large number of decisions, held as under:

"The earlier view was that whenever there is interference with the order of termination or retirement, full back wages were the natural corollary. It has been laid down in the cases noted above that it would depend upon several factors and the Court has to weigh the pros and cons of each case and to take a pragmatic view."

41. In the exposition of law enumerated hereinbefore, now, I would like to examine the merits of the case.

42. In the instant case, the petitioner was engaged by the respondent No.1 through contractors. The petitioner had worked in the capacity of workman. Since, the services of the petitioner were not directly engaged by the respondent No.1, hence, the only remedy available with this Tribunal is to award compensation amount to the petitioner in lump sum amount.

43. Recent developments, particularly the trends particularly much after the year 2007 shows that grant of compensation in lieu of reinstatement has gained precedence, more particularly,

where the services of the workmen have been terminated because of procedural defects. In the case in hand too the termination is found to be illegal in view of the provisions Act, both ends of justice would thus be met, in case the petitioner is granted compensation in lieu of reinstatement thereof. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court titled as **Bharat Sanchar Nigam Ltd. Vs. Bhurumal (2014) 7 SCC 177** and further reiterated lately in **P. Karupiah (dead) through Legal Representatives Vs. General Manager, Thruvulluvar Transport Corporation Ltd. (2018) 12 SCC 663** and **Rashtrasant Tukdoji Maharaj Technical Education Samnsta, Nagpur Vs. Prashant Manikrao Kubitkar (2018) 12 SCC 294**.

44. For the foregoing reasons and keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above, the petitioner is held entitled for a lump sum compensation amount of ₹ 70,000/- (₹ Seventy Thousand only) as lump sum compensation from the respondents, who are jointly and severally liable to pay the awarded amount to the petitioner. All these issues are decided accordingly.

Relief :

45. As a sequel to my above discussion and findings on issues No.1 to 3, the claim of the petitioner succeeds and is hereby allowed and the petitioner is awarded lump sum compensation of ₹ 70,000/- (Rupees Seventy Thousand only) to the workman, to be paid by the respondents jointly and severally within two months from the date of announcement of the award, failing which interest at the rate of 9% (nine percent) would be payable by the respondent society to the workman. It is expressly made clear that apart from lump sum compensation, **the petitioner is entitled for all his legal dues i.e. gratuity, leave encashment, EPF, ESI etc.**, admissible if any, in accordance with law. The reference is disposed off in the aforesaid terms. Let a copy of this award be communicated to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 1st day of June, 2022.

Sd/-
(RAJESH TOMER),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

**IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 21 of 2018

Instituted on : 01-01-2018

Decided on : 01-06-2022

Sanya Kumar s/o Shri Gyal Pat, r/o Village and Post Office Pangi, Tehsil Kalpa, District Kinnaur, H.P. *. Petitioner.*

VERSUS

1. The General Manager, Kashang Hydro Electric Project, HPPCL, Knifed Building, IKHP, Reckong Peo, District Kinnaur, H.P.
2. Praveen Kumar, Contractor, VPO Pangi, Tehsil Kalpa, District Kinnaur, H.P.
3. Bharat Lal, Contractor, VPO Pangi, Tehsil Kalpa, District Kinnaur, H.P.. *Respondents.*

Reference petition under section 10 of the Industrial Disputes Act.

For the petitioner	: Shri Vinod Sharma, Adv.
For the Respondent No. 1	: Shri Manoj Chauhan, Adv.
For the Respondent No. 2	: Ex-parte.
For the Respondent No. 3	: Shri Arvind Negi, Adv.

AWARD

The following reference petition has been, received from the Appropriate Government, *vide* notification dated 31-10-2017, under section 10 of the Industrial Disputes Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, as under:

“Whether termination of services of Shri Sanya Kumar s/o Shri Gyal Pat r/o Village and Post Office Pangi, Tehsil Kalpa, District Kinnaur, H.P. by (i) Praveen Kumar, Contractor, VPO Pangi, Tehsil Kalpa, District Kinnaur, H.P., (ii) Bharat Lal, Contractor, VPO Pangi, Tehsil Kalpa, District Kinnaur, H.P (iii) The General Manager, Kashang Hydro Electric Project, HPPCL, Knifed Building, IKHP, Reckong Peo, District Kinnaur, H.P. (Principal Employer) *w.e.f.* 1-7-2016 without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. To the fore, Shri Sanya Kumar (hereinafter to be referred as the petitioner) has instituted the claim petition against the General Manager, Kashang Hydro Electric Project, HPPCL (**hereinafter to be referred as respondent No. 1**), Shri Praveen Kumar Contractor (**hereinafter to be referred as the respondent No. 2**) and Shri Bharat Lal, Contractor (**hereinafter to be referred as the respondent No. 3**) under the provisions of the Act.

3. Key facts necessary for the disposal of the present reference petition are thus that the petitioner was engaged as supervisor for six years *w.e.f.* 8-7-2010 and remained posted as such till 30-6-2016. On 01-07-2016, the respondent company has illegally and without any notice has terminated the services of the petitioner. The oral termination of the services of the petitioner lead him to approach the respondents for his re-engagement into services but to no avail. Along-with the petitioner the services of eleven supervisors and two chowkidars have also been terminated. Earlier also on 19-8-2010, the services of the petitioner and eleven others workers were terminated and with the intervention of the Deputy Commissioner, Kinnaur their services were retained on 19-8-2010.

4. It is further averred that the respondents by colorable exercise of powers have terminated the services of the petitioner in gross violation of the provisions of sections 25-F, 25-G

and 25-H of the Act. The respondent No. 1 being model employer cannot be expected to act in the manner and fashion in which they have dealt with the case of the petitioner. Due to the acts of omission and commission on the part of the respondents, the right to livelihood of the petitioner has been taken away, which is highly illegal and bad in the eyes of law. The right of life under Article 21 of the Constitution of India is being snatched by the respondent by resorting to illegal means. The petitioner has raised demand notice and served the same upon the respondent.

5. The following prayer clause has been appended, in the footnote of the petition, which reads as under:

“In view of the aforementioned submissions, it is most respectfully prayed that present petition may kindly be allowed with the following relief(s):

- (i) The respondent company may kindly be directed to re-engage the petitioner in service as supervisor at the same place where he was working prior to his oral illegal termination.
- (ii) The respondent may kindly be directed to grant all consequential benefits to the petitioner such as seniority, arrears of back-wages etc.”

6. The lis was resisted and contested by respondent No.1 by filing written reply wherein preliminary objections of maintainability and the petitioner is contract employee engaged by the respondent company have been raised.

7. On merits, it is submitted that the services of the petitioner were engaged for specific time period through contractors to whom work order for providing manpower service in the project was awarded for a specific period throughout the year. The work order was awarded for outsourcing various job/works including data entry/attending/serving in the field and office. The onus to engage the workers lies on the contractors. The answering respondent has nothing to do with the employment of the petitioner. The petitioner was the employee of contractor and deployed with HPPCL on outsource basis through contractor. The requirement of data entry/attending/security services from the local contractor had shrunk in the year 2016 due to completion of construction work of Kashang Hydro Electric Project Stage-1. The services of the petitioner along-with other eleven workers were not terminated by the respondent company, however, their services were hired by M/s HPPCL on contract basis. It is therefore prayed that in view of the submission made hereinabove, the claim petition of the petitioner may kindly be dismissed in the interest of law and justice and justice be done.

8. The respondent No. 2 *i.e.* Shri Praveen Kumar, Contractor has been duly served in accordance with law but he has failed to appear before this Court, hence, vide order dated 10-7-2018, he was proceeded against *ex-parte*.

9. Reply on behalf of respondent No. 3 was filed wherein preliminary objections qua the petitioner not come to the Court with clean hand and maintainability have been taken. On merits, it is submitted that the workman has never been engaged by the respondent No. 3, hence, there is no question of illegal termination of the services of the petitioner *w.e.f.* 30-6-2016. It is therefore prayed that the petition may kindly be dismissed.

10. While filing rejoinder, the petitioner controverted the averments made thereto in the replies filed by respondent No. 1 and 3, and reaffirmed and reiterated those in the petition.

11. On elucidating the pleading of parties, the following issues were struck down for its final determination *vide* Court order dated 30-05-2019.

1. Whether the termination of the petitioner is violative of the provisions of section 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 as alleged. If so, to what relief the petitioner is entitled to? . . . *OPP*.
2. Whether the reference is not maintainable as alleged. If so its effects thereto? . . . *OPR*.
3. Whether the services of the petitioner was hired through a contractor and he was not the employee of respondent No. 1 as alleged. If so its effect thereto? . . . *OPR*.
4. Relief

12. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

13. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

14. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue No. 1	Yes. Entitled to lump sum compensation of ₹ 70,000/-. (₹ Seventy Thousand only)
Issue No. 2	No
Issue No. 3	Yes
Relief.	Reference is answered in affirmative, as per operative part of award

REASONS FOR FINDINGS

Issues No.1 to 3 :

15. All these issues are intermingled and inter connected, as mutually existed and required the common appreciation of evidence, being taken up together for the purpose of their determination and adjudication.

16. To substantiate his case, the petitioner namely Shri Sanya Kumar appeared into the witness dock as (PW-1) to depose that he was engaged as supervisor on 7-7-2010 in project run by respondent No. 1 at Reckong Peo. He continued as such till 30-6-2016 and his services were dispensed with after 30-6-2016 orally without issuing any notice. He approached the respondent for his re-engagement but they refused to give him any work. After his illegal termination, six persons had been engaged by the respondent as attendants. The respondent had also engaged electricians and other tradesmen. Earlier in 2010, the respondent had terminated their services and they had been re-engaged after the respondents entered into an agreement with the representatives of the village in the presence of the Deputy Commissioner *vide* Mark P-1. Their land also been acquired for the project and as such he fall under the category of beneficiaries and the respondent had illegally terminated his services. He prayed that he be re-engaged with all consequential benefits

including back-wages. He has placed on record the detail of the outsourced manpower as received under RTI Act, Mark A-2 and the application made by the 14 terminated workers in the year 2010 Mark A-3.

17. In cross-examination, on behalf of respondent No. 1, he admitted that initially he was not engaged with the respondent No. 1. He further admitted that he was not issued any appointment letter by respondent No. 1 nor any I card was issued by them. He denied that he was never working with the HPPCL and he had been engaged through a contractor. He admitted that his name is not reflected in (PW-2/A). He admitted that he have no documents to show that his attendance was marked with the HPPCL. He denied that he was an employee of respondent No. 3. He also admitted that he has not placed on record anything to show that he was a beneficiary. When cross-examined on behalf of respondent No. 3, he admitted that he was working with respondent No. 3 and he was engaged by respondent No. 3. He further admitted that the respondent No. 3 had never engaged him. He also admitted that his services were terminated by respondent No. 1. He admitted that his salary was paid by respondent No. 3.

18. Shri Lobha Singh, Clerk in the office of Deputy Commissioner, Kinnaur has appeared into the witness box as (PW-2) and proved on record agreement (PW-2/A). In cross-examination on behalf of respondent No. 1, he admitted that (PW-2/A) does not reflect that the petitioner was privy to the terms of the agreement and his name is not reflected in (PW-2/A). When cross-examined on behalf of respondent No. 3, he admitted that the name of the contractor is also not mentioned in (PW-2/A) nor it bears his signatures.

19. PW-3 Shri Man Chand, President of Kashang Pariyojna Prabhavit Sabha, Village Pangi has deposed that the agreement entered between the HPPCL and the representatives of Pariyojna Prabhavit Sabha, Village Pangi was in respect of 14 workers terminated by the HPPCL which included the petitioner and (PW-2/A) bears his signatures as the President of the Sabha. In cross-examination on behalf of respondent No.1, he admitted that (PW-2/A) does not bears the name of the petitioner. He denied that the HPCL had re-engaged the petitioner after the agreement.

20. In order to rebut, the respondent No.1 examined one Shri Mahender Kumar, General Manager, Civil as (RW-1), who tendered in evidence his affidavit (RW-1/A) wherein he reiterated almost all the averments as made in the reply. He also tendered into evidence letter dated 31-3-2008 (RW-1/B), tender dated 31-3-2008 (RW-1/C), letter dated 7-11-2008 (RW-1/D), work order dated 1-1-2008 (RW-1/E), conditions (RW-1/F), work order dated 27-12-2008 (RW-1/G), conditions (RW-1/H), letter dated 2-3-2009 (RW-1/J), work order dated 2-3-2009 (RW-1/K), conditions (RW-1/L), work order dated 31-3-2009 (RW-1/M), conditions (RW-1/N), letter dated 1-12-2009 (RW-1/O), check list (RW-1/P), work order dated 1-12-2009 (RW-1/Q), conditions (RW-1/R), letter dated 30-9-2011 (RW-1/S), work order dated 30-9-2011 (RW-1/T), conditions (RW-1/U), letter dated 27-5-2014 (RW-1/V), work order dated 19-9-2011 (RW-1/W), letter dated 13-3-2011 (RW-1/X), letter dated 20-9-2012 (RW-1/Y), work order dated 20-9-2012 (RW-1/Z), letter dated 31-12-2012 (RW-1/AA), work order dated 31-12-2012 (RW-1/AB), letter dated 22-9-2014 (RW-1/AC), letter dated 30-3-2015 (RW-1/AD), work order dated 30-3-2015 (RW-1/AE), letter dated 31-3-2016 (RW-1/AF), work order dated 31-3-2016 (RW-1/AG), letter dated 11-5-2016 (RW-1/AH), work order dated 11-5-2016 (RW-1/AJ), work order dated 31-3-2016 (RW-1/AK) and work order dated 31-3-2016 (RW-1/AL).

21. In cross-examination, on behalf of petitioner he denied that the petitioner worked as supervisor in their project. He denied that the petitioner was terminated in the year, 2010. He admitted that there was a compromise effected between the parties before the Deputy Commissioner, Kinnaur on 7-7-2010 that the services of the petitioner shall be reinstated. He admitted that the land of the petitioner was acquired for setting up of the project. He denied that the

petitioner had filed a complaint to them for not deducting the EPF. When cross-examined on behalf of respondent No. 3, he admitted that the petitioners were working with the respondent since 2010. He further admitted that as per the work orders the nature of work is computer operator.

22. Shri Arvind Negi, Advocate for respondent No. 3 *vide* his separate statement dated 23-3-2022 has stated that he does not want to lead any evidence i.e oral and documentary on behalf of the respondent No. 3.

23. This is the entire oral as well as documentary evidence led from the side of the parties.

24. Shri Vinod Sharma, Learned counsel for the petitioner has contended with all vehemence that the petitioner was engaged as supervisor by respondent No. 1 in the year 2010 and his services were illegally terminated by the respondent No. 1 by an oral dismissal order in the year 2016. Along-with the petitioner as many as eleven other supervisors and two chowkidars were also terminated. The matter was reconciled and with the intervention of the Deputy Commissioner, Kinnaur, their services were re-engaged. He has also argued that the termination of the services of the petitioner is in violation of the salient provision of the Act as well as Articles 14, 16 and 21 of the Constitution of India.

25. *Per contra*, Shri Manoj Chauhan, Ld. Counsel for the respondent No. 1 argued that there exists no employee-employer relationship between petitioner and respondent No. 1. He further argued that the petitioner was never engaged by the respondent No. 1 and no appointment letter has been issued to him and even no identity card has been placed on record by him. The petitioner has also failed to place on record the statement of account showing the salary allegedly to be paid by respondent No. 1. No documentary proof showing the contribution towards EPF and ESI has been placed on record. The petitioner has alleged that he was engaged as supervisor by the respondent No.1, whereas the work order has been issued for data entry operator. The petitioner was the employee of the contractor, who deputed the petitioner with HPPCL. HE prayed that the claim petition may kindly be dismissed.

26. Shri Arvind Negi, Ld. Counsel for the respondent No. 3, has contended that the petitioner neither pleaded nor proved on record that he was engaged by respondent No. 3. As a matter of fact, the petitioner was engaged by HPPCL. The petitioner has miserably failed to prove that he was the employee of respondent No. 3. He also prayed for the dismissal of the claim petition.

27. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the petitioner, as well Learned Counsel for the respondents No. 1 & 3 and have also scrutinized the entire case record with minute care, caution and circumspection.

28. Admittedly, the petitioner by way of placing on record oral and documentary proof had tried to establish on record to prove that the petitioner has been engaged and working with the respondent No. 1 till the time of his termination. The respondent No. 1 *i.e.* Kashang Hydro Electric Project under HPPCL had engaged the services of the petitioner who worked there for six years *i.e.* 2010 to 2016. However, the petitioner himself deposed that Kashang Hydroelectric Project had engaged his services, in the very opening line of his cross-examination. According to him he was engaged by HPPCL. The respondent No. 1 had issued the work orders inviting the job through contractors. However, the petitioner again twisted the fact by deposing that he was working with respondent No. 1 and engaged by him. He has also admitted that there were many contractors registered with HPPCL.

29. As a matter of fact, the present reference has been sent by the appropriate government qua the termination of the services of the petitioner by the respondents' No. 1 to 3 w.e.f. 1-7-2016.

without complying with the provisions of the Act, the petitioner having been engaged as a supervisor by the principal employer i.e Kashang Hydro Electric Project, HPPCL through the contractors, on outsource basis namely Shri Praveen Kumar and Bharat Lal contractors (Respondents No. 2 & 3). Thus, it is abundantly clear on record that the matter in controversy has been narrowed down in a short compass that whether the respondent No. 1, being principal employer had followed the basic and cardinal principles envisaged under the Act while terminating the services of the petitioner or not? It has been specifically pleaded from the side of the respondent No. 1 that the petitioner had been engaged for a specific time period through the contractor to which the allocation of work order has been issued for providing the manpower service in the Project, being awarded for a specific period throughout the year. As a matter of fact, the work order for outsourcing various works including data entry is awarded in the beginning of any financial year considering the various service by flouting short term notice with the prior approval of the competent authority. The services of the petitioner were also outsourced through local contractors, who deployed the petitioner as per requirement, as such, the onus to deploying the manpower lies with the contractor/agency as per the terms and conditions of the contract. Initially, the petitioner was an employee of the contractor and was deployed with HPPCL on outsource basis. In fact, the petitioner has also admitted in his cross-examination that his services were not at all engaged by Kashang Hydro Electric Project or HPPCL. Though, he has tried to improve his version by stating that he was engaged and terminated by respondent No. 1 but it is merely an afterthought expression and cannot replace the earlier version as deposed by him in his cross-examination.

30. Verily, much stress has been placed on record from the side of the petitioner to the agreement (PW-2/A), executed between the parties *i.e.* the representatives of HPPCL, the representatives Pariyojna Prabhavit Sabha, Village Pangi (effected community) before the Deputy Commissioner, Kinnaur on 7-7-2010 wherein it has been amicably agreed by all the concerned parties that 14 workers terminated by M/s HPPCL shall be provided livelihood by HPPCL till they got employment through HPPCL or some other agency. Seven new recruitments from Pangi village shall be done through M/s HCC Ltd., within 0-7 days from the date of call off strike subject to permission by the Hon'ble High Court. It is contended before me that the petitioner and eleven other workers were terminated by the respondent No. 1 and with the intervention of Deputy Commissioner, Kinnaur, their services were restored on 19-8-2010 and a compromise was effected. Though, the petitioner has miserably failed to establish on record that initially he was engaged by respondent No.1 *i.e.* HPPCL. Neither any appointment letter nor any termination letter has been placed on record. From the recital of the agreement dated 7-7-2010, executed before the Deputy Commissioner, Kinnaur. There was an agreement executed between the parties that the representatives of Project effected members shall be provided the livelihood by HPPCL. Such a recital shall not give any right to the petitioner that he was engaged/appointed by respondent No. 1. More so, the recital of agreement (PW-2/A) dated 7-7-2010, shall not come in any way to substantiate the plea raised from the side of the petitioner. The initial burden lies on the petitioner to prove that he was not engaged by the contractors but by HPPCL.

31. Now, the question which arises for determination before this Tribunal that what relevancy, authenticity and legality attached to the writing dated 7-7-2010 (PW-2/A). All the recital made thereto in such writing amounts to a stop gap arrangement whereby it was resolved by the representatives of all the parties concerned to reconcile the matter. However, providing of livelihood by the respondent No. 1 to the workers, who were terminated by outsourcing agency/contractor, shall providing or offering any appointment/engagement to the petitioner with the respondent No. 1. It is quite apparent on the face of the record that the petitioner was not engaged by the respondent No. 1 directly rather he was engaged on outsource basis through contractor.

32. The next question arise before me that whether the termination of the services of the petitioner *w.e.f.* 1-7-2016, is violative of the provisions of the Act. Amongst arraying both the

contractors, as the contesting respondents, one of them while contesting the claim petition averred that the petitioner has neither been engaged by the replying respondent nor terminated his services. The petitioner was engaged by the respondent No. 1. No legal or vested rights of the petitioner have been infringed by the respondent No. 3 in any manner. However, the petitioner as (PW-1) during cross-examination by respondent No. 3 admitted that he was working with respondent No. 1 and he was engaged by respondent No. 1. He was not engaged by respondent No. 3. Both the contractors are not known to him personally. He has not claimed any particular relief against contractors. All his service conditions were being maintained and supervised by respondent No. 1. All the contentions raised at bar are devoid of merits. In my humble opinion, the petitioner miserably failed to lead any cogent, clear and clinching evidence to establish on record that he was engaged by respondent No. 1. In any case, the petitioner has also failed to produce on record any documentary proof regarding his engagement, oral termination, service conditions and over all supervision and control by respondent No. 1. Mere oral deposition in the absence of any cogent documentary proof assumes no significance in the eyes of law. Furthermore, the averments made thereto in the reply filed by respondent No.1 are fully corroborated by the respondent No. 1 witness Shri Mahender Kumar General Manager, Civil, HPPCL (RW-1), wherein he has categorically stated that the entire dues to the petitioner is shown to have been paid by the respondent. The petitioner was never engaged by respondent No. 1 in any field of work/job at any point of time. The services of the petitioner were engaged on outsource basis through the contractor to whom the respondent No. 1 has awarded the work orders from time to time. The petitioner was the employee of contractor and deployed with HPPCL, on outsource through contractors. Undoubtedly, there was an agreement executed before the Deputy Commissioner, Kinnaur on 7-7-2010 whereby the representatives of project effected members, representatives of HPCL and representatives of HCCL were signatory to the said writings. Simple, on the score that the officers of the HPPCL put their signatures to the said writing shall not provide any employment/engagement to the petitioner. The respondent witness categorically admitted that the petitioner filed complaint before the Deputy Commissioner, Kinnaur. The EPF of the petitioner was deducted by the contractor. He also admitted that the agreement bears the signatures of General Manager, Deputy General Manager of HPPCL respectively being representatives of HPPCL. However, he feigned ignorance that the petitioner was engaged as operator/supervisor. He admitted that after the issuance of the work orders, the same has been accepted by the contractors. Admittedly, the respondent No. 1 being principal employer had engaged the services of the petitioner through the contractors though there is a denial on the part of the contractors. It is now fairly established that the services of the petitioner were engaged by the contractors and deployed with HPPCL. It is also admitted position on record that the contractors while terminating the services of the petitioner is to comply with the requirement of the law. The very action on the part of the respondents while terminating the services of the petitioner has to fall within the four corners of the definition of "retrenchment" as envisaged under section 2-oo (bb) of the Act, hence, the termination of the services of the petitioner is held to be bad and nonest in the eyes of law. Since, the petitioner has completed the requirement of days as fixed by the Government for Tribal area, hence, he is also entitled for the protection of section 25-F of the Act. It is also admitted fact that before retrenching the services of the petitioner neither any notice had been issued nor any compensation has been paid. Therefore, in view of the above discussion, I am satisfied that the workman was terminated illegally and unjustifiably without complying with section 25-F of the Act, which provides as under:

"No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until :

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

- (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government for such authority as may be specified by the appropriate Government by notification in the Official Gazette".

33. So, in view of this enabling provision of the act, no workman employed in any industry, who has been in "continuous service" for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25-B of the Act, which in its material part reads:

"25B. Definition of continuous service. For the purposes of this Chapter;—

- (1) *a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;*
- (2) *where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—*
 - (a) *for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—*
 - (i) *one hundred and ninety days in the case of a workman employed below ground in a mine; and*
 - (ii) *two hundred and forty days, in any other case...."*

34. Since, the petitioner is proved to have completed more than 180 days (as applicable in Tribal area) during the period of twelve calendar months in the preceding year from the date of his retrenchment, his services could not have been terminated unless he was served with one month's mandatory notice and paid the retrenchment compensation, as envisaged under Section 25-F of the Act. Admittedly, the provisions of Section 25-F of the Act were not followed or complied with by the respondent in the latter and spirit. The respondent did not pay the retrenchment compensation to the petitioner, nor had issued any requisite notice to the petitioner.

35. In the back-drop of aforesaid events, it is held that the termination of the petitioner was in violation of the provisions of Sections 25-B and 25-F of the Act. The termination is held to be illegal, unlawful and unjustified.

36. Now, the question arises as to what relief, the workman is entitled to? Their Lordships of Hon'ble Supreme Court in an authority reported as The Workmen of M/s Firestone Tyre & Rubber Co. of India (Pvt.) Ltd. etc. vs. The Management & Ors. 1973 (1) SCC 813, Hon'ble Supreme Court observed as under:

"10. In a particular case, after setting aside the order of dismissal, whether a workman should be reinstated or paid compensation is, as held by this Court in *The Management of Panitole Tea Estate Vs. The workmen* (1971) 1 SCC 742 within the judicial decision of a Labour Court of Tribunal."

37. Similarly, Their Lordship of Hon'ble Delhi High Court in another authority reported as **Nehru Yuva Kendra Sangathan Vs. Union of India & Ors. 2000 IV AD (Delhi) 709, Hon'ble Delhi High Court** dealt with the question of reinstatement and back wages and observed as under:

"The decision of the Supreme Court rendered in the 1970s and 1980s that reinstatement with back wages was the norm in cases where the termination of the services of the workman was held inoperative. The decisions rendered in the 1990s, including the decision of the Constitution Bench in the Punjab Land Development and Reclamation Corporation Ltd., Chandigarh seem to suggest that compensation in lieu of reinstatement and back wages is now the norm. In any case, since I am bound to follow the decision of the Constitution Bench, I, therefore, conclude that reinstatement is not the inevitable consequence of quashing an order of termination; compensation can be awarded in lieu of reinstatement and back wages."

38. To combat with, I am persuaded to award compensation in lieu of reinstatement and back wages to the workman.

39. Similarly, Their Lordships of Hon'ble Supreme Court in another authority reported as **M.L. Binjolkar Vs. State of Madhya Pradesh, 2005 VI (S.C.) 413**, Hon'ble Supreme Court observed in paragraph 7 as under :

"Though the High Court has not specifically dealt with the question as to what would be the appropriate quantum, keeping in view the law laid down by this Court in various cases e.g. *Hindustan Motors Ltd. Vs. Tapanj Kumar Bhattacharya & Anr.* (2002 (6) SCC 41), *Rajendra Prasad Arya Vs. State of Bihar* (200 (9) SCC 514), *Sonepat Cooperative Sugar Mills Ltd. Vs. Ajit Singh* (2005 (3) SCC 232), *Haryana State Cooperative Land Development Bank Vs. Neelam* (2005 (5) SCC 91), *Manager, Reserve Bank of India, Bangalore Vs. S. Mani & Ors.* (2005 (5) SCC 100) and *Allahabad Jal Sansthan Vs. Daya Shankar Rai & Anr.* (2005 (5) SCC 124), we do not find any scope for interference. The earlier view was that whenever there is interference with the order of termination or retirement, full back wages were the natural corollary. It has been laid down in the cases noted above that it would depend upon several factors and the court has to weigh the pros and cons of each case and to take a pragmatic view."

40. Their Lordship of Hon'ble Supreme Court in another authority reported as **U.P. State Brassware Corporation Limited and another Vs. Uday Narain Pandey, (2006) 1 SCC 479**, wherein the Hon'ble Supreme Court, observed as under:

"A Division Bench of this Court in **M.L. Binjolkar v. State of M.P. (2005) 6 SCC 224**, referring to a large number of decisions, held as under:

"The earlier view was that whenever there is interference with the order of termination or retirement, full back wages were the natural corollary. It has been laid down in the cases noted above that it would depend upon several factors and the Court has to weigh the pros and cons of each case and to take a pragmatic view."

41. In the exposition of law enumerated hereinbefore, now, I would like to examine the merits of the case.

42. In the instant case, the petitioner was engaged by the respondent No. 1 through contractors. The petitioner had worked in the capacity of workman. Since, the services of the petitioner were not directly engaged by the respondent No. 1, hence, the only remedy available with this Tribunal is to award compensation amount to the petitioner in lump sum amount.

43. Recent developments, particularly the trends particularly much after the year 2007 shows that grant of compensation in lieu of reinstatement has gained precedence, more particularly, where the services of the workmen have been terminated because of procedural defects. In the case in hand too the termination is found to be illegal in view of the provisions Act, both ends of justice would thus be met, in case the petitioner is granted compensation in lieu of reinstatement thereof. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court titled as **Bharat Sanchar Nigam Ltd. Vs. Bhurumal (2014) 7 SCC 177** and further reiterated lately in **P. Karupiah (dead) through Legal Representatives Vs. General Manager, Thruvulluvar Transport Corporation Ltd. (2018) 12 SCC 663** and **Rashtrasant Tukdoji Maharaj Technical Education Samnsta, Nagpur Vs. Prashant Manikrao Kubitkar (2018) 12 SCC 294**.

44. For the foregoing reasons and keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above, the petitioner is held entitled for a lump sum compensation amount of ₹ 70,000/- (₹ Seventy Thousand only) as lump sum compensation from the respondents, who are jointly and severally liable to pay the awarded amount to the petitioner. All these issues are decided accordingly.

Relief :

45. As a sequel to my above discussion and findings on issues No. 1 to 3, the claim of the petitioner succeeds and is hereby allowed and the petitioner is awarded lump sum compensation of **₹ 70,000/- (Rupees Seventy Thousand only) to the workman, to be paid by the respondents jointly and severally within two months from the date of announcement** of the award, failing which interest at the rate of 9% (nine percent) would be payable by the respondent society to the workman. It is expressly made clear that apart from lump sum compensation, **the petitioner is entitled for all his legal dues i.e. gratuity, leave encashment, EPF, ESI etc.**, admissible if any, in accordance with law. The reference is disposed off in the aforesaid terms. Let a copy of this award be communicated to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 1st day of June, 2022.

Sd/-
(RAJESH TOMER),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

**IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 22 of 2018

Instituted on : 01-01-2018

Decided on : 01-06-2022

Dharam Parkash r/o Village Baro, PO Sungra, Tehsil Nichar, District Kinnaur, H.P.

. .Petitioner .

VERSUS

1. The General Manager, Kashang Hydro Electric Project, HPPCL, Knifed Building, IKHP, Reckong Peo, District Kinnaur, H.P.

2. Hirpal Singh, Government Contractor, VPO Pangi, Tehsil Kalpa, District Kinnaur, H.P.

3. Amit Kumar, Contractor, VPO Pangi, Tehsil Kalpa, District Kinnaur, H.P.

4. Kanwar Singh, Contractor, VPO Pangi, Tehsil Kalpa, District Kinnaur, H.P.

. .Respondents.

Reference petition under section 10 of the Industrial Disputes Act

For the petitioner : Shri Vinod Sharma, Adv.

For the Respondent No. 1 : Shri Manoj Chauhan, Adv.

For the Respondents No. 2 to 4 : Ex-parte.

AWARD

The following reference petition has been, received from the Appropriate Government, *vide* notification dated 21-11-2017, under section 10 of the Industrial Disputes Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, which reads as under:

“Whether termination of services of Shri Dharam Parkash, r/o Village Baro, P.O. Sungra, Tehsil Nichar, District Kinnaur, H.P. by The General Manager, Kashang Hydro Electric Project, HPPCL, Knifed Building, IKHP, Reckong Peo, District Kinnaur, H.P. *w.e.f.* 1-7-2016, who was working as computer operator on outsource basis through (i) Shri Hirpal Singh, Government Contractor, VPO Pangi, Tehsil Kalpa, District Kinnaur, H.P. (ii) Shri Amit Kumar, Contractor, VPO Pangi, Tehsil Kalpa, District Kinnaur, (iii) Kanwar Singh Contractor, VPO Pangi, Tehsil Kalpa, District Kinnaur, H.P. without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. To the fore, Shri Dharam Parkash (hereinafter to be referred as the petitioner) has instituted the claim petition against the General Manager, Kashang Hydro Electric Project, HPPCL

(hereinafter to be referred as respondent No. 1), Shri Hirpal Singh Negi, Contractor (hereinafter to be referred as the respondent No. 2), Shri Amit Kumar, Contractor (hereinafter to be referred as respondent No. 3) and Shri Kanwar Singh, Contractor (hereinafter to be referred as respondent No. 4) under the provisions of the Act.

3. Key facts necessary for the disposal of the present reference petition are thus that the petitioner was engaged as computer operator in July 2006 and subsequently his designation was changed in the year 2009-2010 and he was appointed as data operator and worked as such till 7-7-2016 on which date the respondent company has illegally and without any notice has terminated the services of the petitioner. The oral termination of the services of the petitioner lead him to approach the respondents for his re-engagement into services but to no avail. Along-with the petitioner the services of eleven persons have also been terminated. Earlier also on 19-8-2010, the services of the petitioner and eleven others workers were terminated and with the intervention of the Deputy Commissioner, Kinnaur their services were retained on 19-8-2010.

4. It is further averred that the respondents by colorable exercise of powers have terminated the services of the petitioner in gross violation of the provisions of sections 25-F, 25-G and 25-H of the Act. The respondent No. 1 being model employer cannot be expected to act in the manner and fashion in which they have dealt with the case of the petitioner. Due to the acts of omission and commission on the part of the respondents, the right to livelihood of the petitioner has been taken away, which is highly illegal and bad in the eyes of law. The right of life under Article 21 of the Constitution of India is being snatched by the respondent by resorting to illegal means. The petitioner has raised demand notice and served the same upon the respondent.

5. The following prayer clause has been appended, in the footnote of the petition, which reads as under:

“In view of the aforementioned submissions, it is most respectfully prayed that present petition may kindly be allowed with the following relief(s):

- (i) The respondent company may kindly be directed to re-engage the petitioner in service as Data Operator at the same place where he was working prior to his oral illegal termination.
- (ii) The respondent may kindly be directed to grant all consequential benefits to the petitioner such as seniority, arrears of back-wages etc.”

6. The lis was resisted and contested by respondent No. 1 by filing written reply wherein preliminary objections of maintainability and the petitioner is contract employee engaged by the respondent company have been raised.

7. On merits, it is submitted that the services of the petitioner were engaged for specific time period through contractors to whom work order for providing manpower service in the project was awarded for a specific period throughout the year. The work order was awarded for outsourcing various job/works including data entry/attending/serving in the field and office. The onus to engage the workers lies on the contractors. The answering respondent has nothing to do with the employment of the petitioner. The petitioner was the employee of contractor and deployed with HPPCL on outsource basis through contractor. The requirement of data entry/attending/security services from the local contractor had shrunk in the year 2016 due to completion of construction work of Kashang Hydro Electric Project Stage-1. The services of the petitioner along-with other eleven workers were not terminated by the respondent company, however, their services were hired by M/s HPPCL on contract basis. It is therefore prayed that in view of the submission

made hereinabove, the claim petition of the petitioner may kindly be dismissed in the interest of law and justice and justice be done.

8. The respondents No. 2 to 4 *i.e.* Hirpal Singh, Government Contractor, VPO Pangri, Tehsil Kalpa, District Kinnaur, H.P, Amit Kumar, Contractor, VPO Pangri, Tehsil Kalpa, District Kinnaur, H.P. Kanwar Singh, Contractor, VPO Pangri, Tehsil Kalpa, District Kinnaur, H.P. have been duly served in accordance with law but they have failed to appear before this Court, hence, *vide* order dated 24-9-2018, they were proceeded against *ex-parte*. It is made clear that lateron Shri Arvind Negi, Ld. Counsel has appeared on behalf of respondent No. 3 but he has not taken any steps for setting aside *ex-parte* order dated 24-9-2018.

9. While filing rejoinder, the petitioner controverted the averments made thereto in the replies filed by respondent No. 1 and reaffirmed and reiterated those in the petition.

10. On elucidating the pleading of parties, the following issues were struck down for its final determination *vide* Court order dated 30-05-2019 :—

1. Whether the termination of the petitioner is violative of the provisions of section 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 as alleged. If so, to what relief the petitioner is entitled to? . . . *OPP*.
2. Whether the reference is not maintainable as alleged. If so its effects thereto? . . . *OPR*.
3. Whether the services of the petitioner was hired through a contractor and he was not the employee of respondent no.1 as alleged. If so its effect thereto? . . . *OPR*.
4. Relief

11. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

12. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

13. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue No. 1	Yes. Entitled to lump sum compensation of ₹ 70,000/-. (₹ Seventy Thousand only)
Issue No. 2	No
Issue No. 3	Yes
Relief	Reference is answered in affirmative, as per operative part of award.

REASONS FOR FINDINGS

Issues No. 1 to 3 :

14. All these issues are intermingled and inter connected, as mutually existed and required the common appreciation of evidence, being taken up together for the purpose of their determination and adjudication.

15. To substantiate his case, the petitioner namely Shri Dharam Parkash appeared into the witness dock as (PW-1) to depose that he was engaged as Computer Operator in the month of July 2006 in project run by respondent No. 1 at Reckong Peo. He continued as such till 30-8-2016 and his services were dispensed with after 30-6-2016 orally without issuing any notice. He approached the respondent for his re-engagement but they refused to give him any work. After his illegal termination, six persons had been engaged by the respondent as attendants. The respondent had also engaged electricians and other tradesmen. Earlier in 2010, the respondent had terminated their services and they had been re-engaged after the respondents entered into an agreement with the representatives of the village in the presence of the Deputy Commissioner vide Mark P-1. Their land also been acquired for the project and as such he fall under the category of beneficiaries and the respondent had illegally terminated his services. He prayed that he be re-engaged with all consequential benefits including back-wages. He has placed on record the detail of the outsourced manpower as received under RTI Act, Mark A-2 and the application made by the 14 terminated workers in the year 2010 Mark A-3.

16. In cross-examination, on behalf of respondent No. 1, he admitted that initially he was not engaged with the respondent No. 1. He further admitted that he was not issued any appointment letter by respondent No. 1 nor any I card was issued by them. He denied that he was never working with the HPPCL and he had been engaged through a contractor. He admitted that his name is not reflected in (PW-2/A). He admitted that he have no documents to show that his attendance was marked with the HPPCL. He denied that he was an employee of respondent No. 3. He also admitted that he has not placed on record anything to show that he was a beneficiary. When cross-examined on behalf of respondent No. 3, he admitted that he was working with respondent No. 1 and he was engaged by respondent No. 1. He further admitted that the respondent No. 3 had never engaged him. He also admitted that his services were terminated by respondent No. 1. He admitted that his salary was paid by respondent No.1.

17. In order to rebut, the respondent No. 1 examined one Shri Mahender Kumar, General Manager, Civil as (RW-1), who tendered in evidence his affidavit (RW-1/A) wherein he reiterated almost all the averments as made in the reply. He also tendered into evidence letter dated 31-3-2008 (RW-1/B), tender dated 31-3-2008 (RW-1/C), letter dated 7-11-2008 (RW-1/D), work order dated 1-1-2008 (RW-1/E), conditions (RW-1/F), work order dated 27-12-2008 (RW-1/G), conditions (RW-1/H), letter dated 2-3-2009 (RW-1/J), work order dated 2-3-2009 (RW-1/K), conditions (RW-1/L), work order dated 31-3-2009 (RW-1/M), conditions (RW-1/N), letter dated 1-12-2009 (RW-1/O), check list (RW-1/P), work order dated 1-12-2009 (RW-1/Q), conditions (RW-1/R), letter dated 30-9-2011 (RW-1/S), work order dated 30-9-2011 (RW-1/T), conditions (RW-1/U), letter dated 27-5-2014 (RW-1/V), work order dated 19-9-2011 (RW-1/W), letter dated 13-3-2011 (RW-1/X), letter dated 20-9-2012 (RW-1/Y), work order dated 20-9-2012 (RW-1/Z), letter dated 31-12-2012 (RW-1/AA), work order dated 31-12-2012 (RW-1/AB), letter dated 22-9-2014 (RW-1/AC), letter dated 30-3-2015 (RW-1/AD), work order dated 30-3-2015 (RW-1/AE), letter dated 31-3-2016 (RW-1/AF), work order dated 31-3-2016 (RW-1/AG), letter dated 11-5-2016 (RW-1/AH), work order dated 11-5-2016 (RW-1/AJ), work order dated 31-3-2016 (RW-1/AK and work order dated 31-3-2016 (RW-1/AL).

18. In cross-examination, on behalf of petitioner he denied that the petitioner worked as supervisor in their project. He denied that the petitioner was terminated in the year, 2010. He admitted that there was a compromise effected between the parties before the Deputy Commissioner, Kinnaur on 7-7-2010 that the services of the petitioner shall be reinstated. He

admitted that the land of the petitioner was acquired for setting up of the project. He denied that the petitioner had filed complaint to them for not deducting the EPF. When cross-examined on behalf of respondent No. 3, he admitted that the petitioners were working with the respondent since 2010. He further admitted that as per the work orders the nature of work is computer operator.

19. Shri Arvind Negi, Advocate for respondent No. 3 *vide* his separate statement dated 23-3-2022 has stated that he does not want to lead any evidence *i.e.* oral and documentary on behalf of the respondent No. 3.

20. This is the entire oral as well as documentary evidence led from the side of the parties.

21. Shri Vinod Sharma, Learned counsel for the petitioner has contended with all vehemence that the petitioner was engaged as computer operator/data operator by respondent No. 1 in the month of July, 2006 and his services were illegally terminated by the respondent No. 1 by an oral dismissal order in the year 2016. Along-with the petitioner as many as eleven other persons and two chowkidars were also terminated. The matter was reconciled and with the intervention of the Deputy Commissioner, Kinnaur, their services were re-engaged. He has also argued that the termination of the services of the petitioner is in violation of the salient provision of the Act as well as Articles 14, 16 and 21 of the Constitution of India.

22. *Per contra*, Shri Manoj Chauhan, Ld. Counsel for the respondent No. 1 argued that there exists no employee-employer relationship between petitioner and respondent No. 1. He further argued that the petitioner was never engaged by the respondent No. 1 and no appointment letter has been issued to him and even no identity card has been placed on record by him. The petitioner has also failed to place on record the statement of account showing the salary allegedly to be paid by respondent No. 1. No documentary proof showing the contribution towards EPF and ESI has been placed on record. The petitioner has alleged that he was engaged as computer operator by the respondent No. 1, whereas the work order has been issued for data entry operator. The petitioner was the employee of the contractor, who deputed the petitioner with HPPCL. HE prayed that the claim petition may kindly be dismissed.

23. Shri Arvind Negi, Ld. Counsel for the respondent No. 3, has contended that the petitioner neither pleaded nor proved on record that he was engaged by respondent No. 3. As a matter of fact, the petitioner was engaged by HPPCL. The petitioner has miserably failed to prove that he was the employee of respondent no.3. He also prayed for the dismissal of the claim petition.

24. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the petitioner, as well Learned Counsel for the respondents No. 1 & 3 and have also scrutinized the entire case record with minute care, caution and circumspection.

25. Admittedly, the petitioner by way of placing on record oral and documentary proof had tried to establish on record to prove that the petitioner has been engaged and working with the respondent No. 1 till the time of his termination. The respondent No. 1 *i.e.* Kashang Hydro Electric Project under HPPCL had engaged the services of the petitioner who worked there for ten years *i.e.* 2006 to 2016. However, the petitioner himself deposed that Kashang Hydroelectric Project had engaged his services, in the very opening line of his cross-examination. According to him he was engaged by HPPCL. The respondent No. 1 had issued the work orders inviting the job through contractors. However, the petitioner again twisted the fact by deposing that he was working with respondent No. 1 and engaged by him. He has also admitted that there were many contractors registered with HPPCL.

26. As a matter of fact, the present reference has been sent by the appropriate government qua the termination of the services of the petitioner by the respondents No. 1 to 4 w.e.f. 1-7-2016.

without complying with the provisions of the Act, the petitioner having been engaged as a computer operator by the principal employer i.e Kashang Hydro Electric Project, HPPCL through the contractors on outsource basis (Respondents No. 2 to 4). Thus, it is abundantly clear on record that the matter in controversy has been narrowed down in a short compass that whether the respondent No. 1, being principal employer had followed the basic and cardinal principles envisaged under the Act while terminating the services of the petitioner or not? It has been specifically pleaded from the side of the respondent No. 1 that the petitioner had been engaged for a specific time period through the contractor to which the allocation of work order has been issued for providing the manpower service in the Project, being awarded for a specific period throughout the year. As a matter of fact, the work order for outsourcing various works including data entry is awarded in the beginning of any financial year considering the various service by flouting short term notice with the prior approval of the competent authority. The services of the petitioner were also outsourced through local contractors, who deployed the petitioner as per requirement, as such, the onus to deploying the manpower lies with the contractor/agency as per the terms and conditions of the contract. Initially, the petitioner was an employee of the contractor and was deployed with HPPCL on outsource basis. In fact, the petitioner has also admitted in his cross-examination that his services were not at all engaged by Kashang Hydro Electric Project or HPPCL. Though, he has tried to improve his version by stating that he was engaged and terminated by respondent No. 1 but it is merely an afterthought expression and cannot replace the earlier version as deposed by him in his cross-examination.

27. Verily, much stress has been placed on record from the side of the petitioner to the agreement (PW-2/A), executed between the parties i.e the representatives of HPPCL, the representatives Pariyojna Prabhavit Sabha, Village Pangi (effected community) before the Deputy Commissioner, Kinnaur on 7-7-2010 wherein it has been amicably agreed by all the concerned parties that 14 workers terminated by M/s HPPCL shall be provided livelihood by HPPCL till they got employment through HPPCL or some other agency. Seven new recruitments from Pangi Village shall be done through M/s HCC Ltd., within 0-7 days from the date of call off strike subject to permission by the Hon'ble High Court. It is contended before me that the petitioner and eleven other workers were terminated by the respondent No.1 and with the intervention of Deputy Commissioner, Kinnaur, their services were restored on 19-8-2010 and a compromise was effected. Though, the petitioner has miserably failed to establish on record that initially he was engaged by respondent No. 1 i.e. HPPCL. Neither any appointment letter nor any termination letter has been placed on record. From the recital of the agreement dated 7-7-2010, executed before the Deputy Commissioner, Kinnaur. There was an agreement executed between the parties that the representatives of Project effected members shall be provided the livelihood by HPPCL. Such a recital shall not give any right to the petitioner that he was engaged/appointed by respondent No. 1. More so, the recital of agreement (PW-2/A) dated 7-7-2010, shall not come in any way to substantiate the plea raised from the side of the petitioner. The initial burden lies on the petitioner to prove that he was not engaged by the contractors but by HPPCL.

28. Now, the question which arises for determination before this Tribunal that what relevancy, authenticity and legality attached to the writing dated 7-7-2010 (PW-2/A). All the recital made thereto in such writing amounts to a stop gap arrangement whereby it was resolved by the representatives of all the parties concerned to reconcile the matter. However, providing of livelihood by the respondent No. 1 to the workers, who were terminated by outsourcing agency/contractor, shall providing or offering any appointment/engagement to the petitioner with the respondent No. 1. It is quite apparent on the face of the record that the petitioner was not engaged by the respondent No. 1 directly rather he was engaged on outsource basis through contractor.

29. The next question arise before me that whether the termination of the services of the petitioner *w.e.f.* 1-7-2016, is violative of the provisions of the Act. Amongst arraying both the

contractors, as the contesting respondents, one of them while contesting the claim petition averred that the petitioner has neither been engaged by the replying respondent nor terminated his services. The petitioner was engaged by the respondent No. 1. No legal or vested rights of the petitioner have been infringed by the respondent No. 3 in any manner. However, the petitioner as (PW-1) during cross-examination by respondent No. 3 admitted that he was working with respondent No. 1 and he was engaged by respondent No. 1. He was not engaged by respondent No. 3. Both the contractors are not known to him personally. He has not claimed any particular relief against contractors. All his service conditions were being maintained and supervised by respondent No. 1. All the contentions raised at bar are devoid of merits. In my humble opinion, the petitioner miserably failed to lead any cogent, clear and clinching evidence to establish on record that he was engaged by respondent No. 1. In any case, the petitioner has also failed to produce on record any documentary proof regarding his engagement, oral termination, service conditions and over all supervision and control by respondent No. 1. Mere oral deposition in the absence of any cogent documentary proof assumes no significance in the eyes of law. Furthermore, the averments made thereto in the reply filed by respondent No. 1 are fully corroborated by the respondent No. 1 witness Shri Mahender Kumar General Manager, Civil, HPPCL (RW-1), wherein he has categorically stated that the entire dues to the petitioner is shown to have been paid by the respondent. The petitioner was never engaged by respondent No.1 in any field of work/job at any point of time. The services of the petitioner were engaged on outsource basis through the contractor to whom the respondent No. 1 has awarded the work orders from time to time. The petitioner was the employee of contractor and deployed with HPPCL, on outsource through contractors. Undoubtedly, there was an agreement executed before the Deputy Commissioner, Kinnaur on 7-7-2010 whereby the representatives of project effected members, representatives of HPCL and representatives of HCCL were signatory to the said writings. Simple, on the score that the officers of the HPPCL put their signatures to the said writing shall not provide any employment/engagement to the petitioner. The respondent witness categorically admitted that the petitioner filed complaint before the Deputy Commissioner, Kinnaur. The EPF of the petitioner was deducted by the contractor. He also admitted that the agreement bears the signatures of General Manager, Deputy General Manager of HPPCL respectively being representatives of HPPCL. However, he feigned ignorance that the petitioner was engaged as computer operator. He admitted that after the issuance of the work orders, the same has been accepted by the contractors. Admittedly, the respondent No. 1 being principal employer had engaged the services of the petitioner through the contractors though there is a denial on the part of the contractors. It is now fairly established that the services of the petitioner were engaged by the contractors and deployed with HPPCL. It is also admitted position on record that the contractors while terminating the services of the petitioner is to comply with the requirement of the law. The very action on the part of the respondents while terminating the services of the petitioner has to fall within the four corners of the definition of "retrenchment" as envisaged under section 2-oo (bb) of the Act, hence, the termination of the services of the petitioner is held to be bad and nonest in the eyes of law. Since, the petitioner has completed the requirement of days as fixed by the Government for Tribal area, hence, he is also entitled for the protection of section 25-F of the Act. It is also admitted fact that before retrenching the services of the petitioner neither any notice had been issued nor any compensation has been paid. Therefore, in view of the above discussion, I am satisfied that the workman was terminated illegally and unjustifiably without complying with section 25-F of the Act, which provides as under:

"No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until :

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

- (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government for such authority as may be specified by the appropriate Government by notification in the Official Gazette".

30. So, in view of this enabling provision of the act, no workman employed in any industry, who has been in "continuous service" for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25-B of the Act, which in its material part reads:

"25B. Definition of continuous service. For the purposes of this Chapter;—

- (1) *a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;*
- (2) *where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer.—*
 - (a) *for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than.—*
 - (i) *one hundred and ninety days in the case of a workman employed below ground in a mine; and*
 - (ii) *two hundred and forty days, in any other case...."*

31. Since, the petitioner is proved to have completed more than 180 days (as applicable in Tribal area) during the period of twelve calendar months in the preceding year from the date of his retrenchment, his services could not have been terminated unless he was served with one month's mandatory notice and paid the retrenchment compensation, as envisaged under Section 25-F of the Act. Admittedly, the provisions of Section 25-F of the Act were not followed or complied with by the respondent in the latter and spirit. The respondent did not pay the retrenchment compensation to the petitioner, nor had issued any requisite notice to the petitioner.

32. In the back-drop of aforesaid events, it is held that the termination of the petitioner was in violation of the provisions of Sections 25-B and 25-F of the Act. The termination is held to be illegal, unlawful and unjustified.

33. Now, the question arises as to what relief, the workman is entitled to? Their Lordships of Hon'ble Supreme Court in an authority reported as The Workmen of M/s Firestone Tyre & Rubber Co. of India (Pvt.) Ltd. etc. vs. The Management & Ors. 1973 (1) SCC 813, Hon'ble Supreme Court observed as under:

"10. In a particular case, after setting aside the order of dismissal, whether a workman should be reinstated or paid compensation is, as held by this Court in **The Management of Panitole Tea Estate Vs. The workmen (1971) 1 SCC 742** within the judicial decision of a Labour Court of Tribunal."

34. Similarly, Their Lordship of Hon'ble Delhi High Court in another authority reported as **Nehru Yuva Kendra Sangathan Vs. Union of India & Ors. 2000 IV AD (Delhi) 709, Hon'ble Delhi High Court** dealt with the question of reinstatement and back wages and observed 28 as under:

"The decision of the Supreme Court rendered in the 1970s and 1980s that reinstatement with back wages was the norm in cases where the termination of the services of the workman was held inoperative. The decisions rendered in the 1990s, including the decision of the Constitution Bench in the Punjab Land Development and Reclamation Corporation Ltd., Chandigarh seem to suggest that compensation in lieu of reinstatement and back wages is now the norm. In any case, since I am bound to follow the decision of the Constitution Bench, I, therefore, conclude that reinstatement is not the inevitable consequence of quashing an order of termination; compensation can be awarded in lieu of reinstatement and back wages."

35. To combat with, I am persuaded to award compensation in lieu of reinstatement and back wages to the workman.

36. Similarly, Their Lordships of Hon'ble Supreme Court in another authority reported as **M.L. Binjolkar Vs. State of Madhya Pradesh, 2005 VI (S.C.) 413**, Hon'ble Supreme Court observed in paragraph 7 as under :

"Though the High Court has not specifically dealt with the question as to what would be the appropriate quantum, keeping in view the law laid down by this Court in various cases *e.g.* Hindustan Motors Ltd. *Vs.* Tapanj Kumar Bhattarcharya & Anr. (2002 (6) SCC 41), Rajendra Prasad Arya *Vs.* State of Bihar (200 (9) SCC 514), Sonapat Cooperative Sugar Mills Ltd. *Vs.* Ajit Singh (2005 (3) SCC 232), Haryana State Cooperative Land Development Bank *Vs.* Neelam (2005 (5) SCC 91), Manager, Reserve Bank of India, Bangalore *Vs.* S. Mani & Ors. (2005 (5) SCC 100) and Allahabad Jal Sansthan *Vs.* Daya Shankar Rai & Anr. (2005 (5) SCC 124), we do not find any scope for interference. The earlier view was that whenever there is interference with the order of termination or retirement, full back wages were the natural corollary. It has been laid down in the cases noted above that it would depend upon several factors and the court has to weigh the pros and cons of each case and to take a pragmatic view."

37. Their Lordship of Hon'ble Supreme Court in another authority reported as **U.P. State Brassware Corporation Limited and another Vs. Uday Narain Pandey, (2006) 1 SCC 479**, wherein the Hon'ble Supreme Court, observed as under:

"A Division Bench of this Court in **M.L. Binjolkar v. State of M.P. (2005) 6 SCC 224**, referring to a large number of decisions, held as under:

"The earlier view was that whenever there is interference with the order of termination or retirement, fullback wages were the natural corollary. It has been laid down in the cases noted above that it would depend upon several factors and the Court has to weigh the pros and cons of each case and to take a pragmatic view."

38. In the exposition of law enumerated hereinbefore, now, I would like to examine the merits of the case.

39. In the instant case, the petitioner was engaged by the respondent No. 1 through contractors. The petitioner had worked in the capacity of workman. Since, the services of the petitioner were not directly engaged by the respondent no.1, hence, the only remedy available with this Tribunal is to award compensation amount to the petitioner in lump sum amount.

40. Recent developments, particularly the trends particularly much after the year 2007 shows that grant of compensation in lieu of reinstatement has gained precedence, more particularly, where the services of the workmen have been terminated because of procedural defects. In the case in hand too the termination is found to be illegal in view of the provisions Act, both ends of justice would thus be met, in case the petitioner is granted compensation in lieu of reinstatement thereof. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court titled as **Bharat Sanchar Nigam Ltd. Vs. Bhurumal (2014) 7 SCC 177** and further reiterated lately in **P. Karupaiah (dead) through Legal Representatives Vs. General Manager, Thruuvalluvar Transport Corporation Ltd. (2018) 12 SCC 663 and Rashtrasant Tukdoji Maharaj Technical Education Samnsta, Nagpur Vs. Prashant Manikrao Kubitkar (2018) 12 SCC 294.**

41. For the foregoing reasons and keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above, the petitioner is held entitled for a lump sum compensation amount of ₹ 70,000/- (₹ Seventy Thousand only) as lump sum compensation from the respondents who are jointly and severally liable to pay the awarded amount to the petitioner. All these issues are decided accordingly.

Relief :

42. As a sequel to my above discussion and findings on issues No. 1 to 3, the claim of the petitioner succeeds and is hereby allowed and the petitioner is awarded lump sum compensation of **₹ 70,000/- (Rupees Seventy Thousand only) to the workman, to be paid by the respondent No.1 within two months from the date of announcement** of the award, failing which interest at the rate of 9% (nine percent) would be payable by the respondents to the workman. It is expressly made clear that apart from lump sum compensation, **the petitioner is entitled for all his legal dues i.e gratuity, leave encashment, EPF, ESI etc.**, admissible if any, in accordance with law. The reference is disposed off in the aforesaid terms. Let a copy of this award be communicated to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 1st day of June, 2022.

Sd/-
(RAJESH TOMER),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

**IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 32 of 2018

Instituted on : 13-2-2018

Decided on

: 01-06-2022

Nirmal Singh s/o Shri Laxizoz, r/o Village and Post Office, Pangi, Tehsil Kalpa, District Kinnaur, H.P. .*Petitioner.*

VERSUS

1. The General Manager, Kashang Hydro Electric Project, HPPCL, Knifed Building, IKHP, reckon Peo, District Kinnaur, H.P.

2. Praveen Kumar, Contractor, VPO Pangi, Tehsil Kalpa, District Kinnaur, H.P.

3. Bharat Lal Contractor, VPO Pangi, Tehsil Kalpa, District Kinnaur, H.P. .*Respondents.*

Reference petition under section 10 of the Industrial Disputes Act

For the petitioner : Shri Vinod Sharma, Advocate

For the Respondent No.1 : Shri Manoj Chauhan, Advocate

For the Respondent No. 2 : Ex-parte

For the Respondent No. 3 : Shri Arvind Negi, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government, vide notification dated 02-11-2017, under section 10 of the Industrial Disputes Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, as under:

“Whether termination of services of Shri Nirmal Singh s/o Shri Laxizoz, r/o Village and Post Office, Pangi, Tehsil Kapla, District Kinnaur, H.P. by (i) Praveen Kumar, Contractor, VPO Pangi, Tehsil Kalpa, District Kinnaur, H.P. (ii) Bharat Lal, Contractor, VPO Pangi, Tehsil Kalpa, District Kinnaur, H.P. (iii) The General Manager, Kashang Hydro Electric Project, HPPCL, Knifed Building, IKHP, Reckong Peo, District Kinnaur, H.P. (Principal Employer) *w.e.f.* 1-7-2016 without complying with the provisions of the Industrial Disputes act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. To the fore, Shri Nirmal Singh (hereinafter to be referred as the petitioner) has instituted the claim petition against the General Manager, Kashang Hydro Electric Project, HPPCL (**hereinafter to be referred as respondent No. 1**), Shri Praveen Kumar Contractor (**hereinafter to be referred as the respondent No. 2**) and Shri Bharat Lal, Contractor (**hereinafter to be referred as the respondent No. 3**) under the provisions of the Act.

3. Key facts necessary for the disposal of the present reference petition are thus that the petitioner was engaged as supervisor for six years *w.e.f.* 8-7-2010 and remained posted as such till 29-6-2016. On 30-6-2016, the respondent company has illegally and without any notice has terminated the services of the petitioner. The oral termination of the services of the petitioner lead him to approach the respondents for his re-engagement into services but to no avail. Along-with the petitioner the services of eleven supervisors and two chowkidars have also been terminated. Earlier

also on 19-8-2010, the services of the petitioner and eleven others workers were terminated and with the intervention of the Deputy Commissioner, Kinnaur their services were retained on 19-8-2010.

4. It is further averred that the respondents by colorable exercise of powers have terminated the services of the petitioner in gross violation of the provisions of sections 25-F, 25-G and 25-H of the Act. The respondent No. 1 being model employer cannot be expected to act in the manner and fashion in which they have dealt with the case of the petitioner. Due to the acts of omission and commission on the part of the respondents, the right to livelihood of the petitioner has been taken away, which is highly illegal and bad in the eyes of law. The right of life under Article 21 of the Constitution of India is being snatched by the respondent by resorting to illegal means. The petitioner has raised demand notice and served the same upon the respondent.

5. The following prayer clause has been appended, in the footnote of the petition, which reads as under:

“In view of the aforementioned submissions, it is most respectfully prayed that present petition may kindly be allowed with the following relief(s):

- (i) The respondent company may kindly be directed to re-engage the petitioner in service as supervisor at the same place where he was working prior to his oral illegal termination.
- (ii) The respondent may kindly be directed to grant all consequential benefits to the petitioner such as seniority, arrears of back-wages etc.”

6. The lis was resisted and contested by respondent No. 1 by filing written reply wherein preliminary objections of maintainability and the petitioner is contract employee engaged by the respondent company have been raised.

7. On merits, it is submitted that the services of the petitioner were engaged for specific time period through contractors to whom work order for providing manpower service in the project was awarded for a specific period throughout the year. The work order was awarded for outsourcing various job/works including data entry/attending/serving in the field and office. The onus to engage the workers lies on the contractors. The answering respondent has nothing to do with the employment of the petitioner. The petitioner was the employee of contractor and deployed with HPPCL on outsource basis through contractor. The requirement of data entry/attending/security services from the local contractor had shrunk in the year 2016 due to completion of construction work of Kashang Hydro Electric Project Stage-1. The services of the petitioner along-with other eleven workers were not terminated by the respondent company, however, their services were hired by M/s HPPCL on contract basis. It is therefore prayed that in view of the submission made hereinabove, the claim petition of the petitioner may kindly be dismissed in the interest of law and justice and justice be done.

8. The respondent No. 2 *i.e.* Shri Praveen Kumar, Contractor has been duly served in accordance with law but he has failed to appear before this Court, hence, *vide* order dated 10-7-2018, he was proceeded against ex-parte.

9. Reply on behalf of respondent No. 3 was filed wherein preliminary objections qua the petitioner not come to the Court with clean hand and maintainability have been taken. On merits, it is submitted that the workman has never been engaged by the respondent No. 3, hence, there is no question of illegal termination of the services of the petitioner *w.e.f.* 30-6-2016. It is therefore prayed that the petition may kindly be dismissed.

10. While filing rejoinder, the petitioner controverted the averments made thereto in the replies filed by respondent No. 1 and 3, and reaffirmed and reiterated those in the petition.

11. On elucidating the pleading of parties, the following issues were struck down for its final determination *vide* Court order dated 30-05-2019 :—

1. Whether the termination of the petitioner is violative of the provisions of section 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 as alleged. If so, to what relief the petitioner is entitled to? . . .*OPP.*
2. Whether the reference is not maintainable as alleged. If so its effects thereto? . . .*OPR.*
3. Whether the services of the petitioner was hired through a contractor and he was not the employee of respondent No.1 as alleged. If so its effect thereto? . . .*OPR.*
4. Relief

12. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

13. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

14. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue No. 1	Yes. Entitled to lump sum compensation of ₹ 70,000/-. (₹ Seventy Thousand only)
Issue No. 2	No
Issue No. 3	Yes
Relief	Reference is answered in affirmative, as per operative part of award.

REASONS FOR FINDINGS

Issues No.1 to 3 :

15. All these issues are intermingled and inter connected, as mutually existed and required the common appreciation of evidence, being taken up together for the purpose of their determination and adjudication.

16. To substantiate his case, the petitioner namely Shri Nirmal Singh appeared into the witness dock as (PW-1) to depose that he was engaged as supervisor on 7-7-2010 in project run by respondent No. 1 at Reckong Peo. He continued as such till 30-6-2016 and his services were dispensed with after 30-6-2016 orally without issuing any notice. He approached the respondent for his reengagement but they refused to give him any work. After his illegal termination, six persons had been engaged by the respondent as attendants. The respondent had also engaged electricians and other tradesmen. Earlier in 2010, the respondent had terminated their services and they had been re-engaged after the respondents entered into an agreement with the representatives of the

village in the presence of the Deputy Commissioner *vide* Mark P-1. Their land also been acquired for the project and as such he fall under the category of beneficiaries and the respondent had illegally terminated his services. He prayed that he be re-engaged with all consequential benefits including back-wages. He has placed on record the detail of the outsourced manpower as received under RTI Act, Mark A-2 and the application made by the 14 terminated workers in the year 2010 Mark A-3.

17. In cross-examination, on behalf of respondent No. 1, he admitted that initially he was not engaged with the respondent No. 1. He further admitted that he was not issued any appointment letter by respondent No. 1 nor any I card was issued by them. He denied that he was never working with the HPPCL and he had been engaged through a contractor. He admitted that his name is not reflected in (PW-2/A). He admitted that he have no documents to show that his attendance was marked with the HPPCL. He denied that he was an employee of respondent No. 3. He also admitted that he has not placed on record anything to show that he was a beneficiary. When cross-examined on behalf of respondent No. 3, he admitted that he was working with respondent No.3 and he was engaged by respondent No. 3. He further admitted that the respondent No. 3 had never engaged him. He also admitted that his services were terminated by respondent No. 1. He admitted that his salary was paid by respondent No. 3.

18. Shri Lobha Singh, Clerk in the office of Deputy Commissioner, Kinnaur has appeared into the witness box as (PW-2) and proved on record agreement (PW-2/A). In cross-examination on behalf of respondent No. 1, he admitted that (PW-2/A) does not reflect that the petitioner was privy to the terms of the agreement and his name is not reflected in (PW-2/A). When cross-examined on behalf of respondent No. 3, he admitted that the name of the contractor is also not mentioned in (PW-2/A) nor it bears his signatures.

19. PW-3 Shri Man Chand, President of Kashang Pariyojna Prabhavit Sabha, Village Pangi has deposed that the agreement entered between the HPPCL and the representatives of Pariyojna Prabhavit Sabha, Village Pangi was in respect of 14 workers terminated by the HPPCL which included the petitioner and (PW-2/A) bears his signatures as the President of the Sabha. In cross-examination on behalf of respondent No. 1, he admitted that (PW-2/A) does not bears the name of the petitioner. He denied that the HPCL had re-engaged the petitioner after the agreement.

20. In order to rebut, the respondent No. 1 examined one Shri Mahender Kumar, General Manager, Civil as (RW-1), who tendered in evidence his affidavit (RW-1/A) wherein he reiterated almost all the averments as made in the reply. He also tendered into evidence letter dated 31-3-2008 (RW-1/B), tender dated 31-3-2008 (RW-1/C), letter dated 7-11-2008 (RW-1/D), work order dated 1-1-2008 (RW-1/E), conditions (RW-1/F), work order dated 27-12-2008 (RW-1/G), conditions (RW-1/H), letter dated 2-3-2009 (RW-1/J), work order dated 2-3-2009 (RW-1/K), conditions (RW-1/L), work order dated 31-3-2009 (RW-1/M), conditions (RW-1/N), letter dated 1.12.2009 (RW-1/O), check list (RW-1/P), work order dated 1-12-2009 (RW-1/Q), conditions (RW-1/R), letter dated 30-9-2011 (RW-1/S), work order dated 30-9-2011 (RW-1/T), conditions (RW-1/U), letter dated 27-5-2014 (RW-1/V), work order dated 19-9-2011 (RW-1/W), letter dated 13-3-2011 (RW-1/X), letter dated 20-9-2012 (RW-1/Y), work order dated 20-9-2012 (RW-1/Z), letter dated 31-12-2012 (RW-1/AA), work order dated 31-12-2012 (RW-1/AB), letter dated 22-9-2014 (RW-1/AC), letter dated 30-3-2015 (RW-1/AD), work order dated 30-3-2015 (RW-1/AE), letter dated 31-3-2016 (RW-1/AF), work order dated 31-3-2016 (RW-1/AG), letter dated 11-5-2016 (RW-1/AH), work order dated 11-5-2016 (RW-1/AJ), work order dated 31-3-2016 (RW-1/AK) and work order dated 31-3-2016 (RW-1/AL).

21. In cross-examination, on behalf of petitioner he denied that the petitioner worked as supervisor in their project. He denied that the petitioner was terminated in the year, 2010. He

admitted that there was a compromise effected between the parties before the Deputy Commissioner, Kinnaur on 7-7-2010 that the services of the petitioner shall be reinstated. He admitted that the land of the petitioner was acquired for setting up of the project. He denied that the petitioner had filed complaint to them for not deducting the EPF. When cross-examined on behalf of respondent No. 3, he admitted that the petitioners were working with the respondent since 2010. He further admitted that as per the work orders the nature of work is computer operator.

22. Shri Arvind Negi, Advocate for respondent No. 3 *vide* his separate statement dated 23-3-2022 has stated that he does not want to lead any evidence *i.e.* oral and documentary on behalf of the respondent No. 3.

23. This is the entire oral as well as documentary evidence led from the side of the parties.

24. Shri Vinod Sharma, Learned counsel for the petitioner has contended with all vehemence that the petitioner was engaged as supervisor by respondent No.1 in the year 2010 and his services were illegally terminated by the respondent No.1 by an oral dismissal order in the year 2016. Along-with the petitioner as many as eleven other supervisors and two chowkidars were also terminated. The matter was reconciled and with the intervention of the Deputy Commissioner, Kinnaur, their services were re-engaged. He has also argued that the termination of the services of the petitioner is in violation of the salient provision of the Act as well as Articles 14,16 and 21 of the Constitution of India.

25. *Per contra*, Shri Manoj Chauhan, Ld. Counsel for the respondent No.1 argued that there exists no employee-employer relationship between petitioner and respondent No.1. He further argued that the petitioner was never engaged by the respondent No. 1 and no appointment letter has been issued to him and even no identity card has been placed on record by him. The petitioner has also failed to place on record the statement of account showing the salary allegedly to be paid by respondent No.1. No documentary proof showing the contribution towards EPF and ESI has been placed on record. The petitioner has alleged that he was engaged as supervisor by the respondent no.1, whereas the work order has been issued for data entry operator. The petitioner was the employee of the contractor, who deputed the petitioner with HPPCL. He prayed that the claim petition may kindly be dismissed.

26. Shri Arvind Negi, Ld. Counsel for the respondent No.3, has contended that the petitioner neither pleaded nor proved on record that he was engaged by respondent No. 3. As a matter of fact, the petitioner was engaged by HPPCL. The petitioner has miserably failed to prove that he was the employee of respondent No. 3. He also prayed for the dismissal of the claim petition.

27. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the petitioner, as well Learned Counsel for the respondents No.1 & 3 and have also scrutinized the entire case record with minute care, caution and circumspection.

28. Admittedly, the petitioner by way of placing on record oral and documentary proof had tried to established on record to prove that the petitioner has been engaged and working with the respondent No.1 till the time of his termination. The respondent No.1 *i.e.* Kashang Hydro Electric Project under HPPCL had engaged the services of the petitioner who worked there for six years *i.e.* 2010 to 2016. However, the petitioner himself deposed that Kashang Hydroelectric Project had engaged his services, in the very opening line of his cross-examination. According to him he was engaged by HPPCL. The respondent No. 1 had issued the work orders inviting the job through contractors. However, the petitioner again twisted the fact by deposing that he was working with respondent No.1 and engaged by him. He has also admitted that there were many contractors registered with HPPCL.

29. As a matter of fact, the present reference has been sent by the appropriate government qua the termination of the services of the petitioner by the respondents No. 1 to 3 w.e.f. 1-7-2016, without complying with the provisions of the Act, the petitioner having been engaged as a supervisor by the principal employer i.e Kashang Hydro Electric Project, HPPCL through the contractors, on outsource basis namely Shri Praveen Kumar and Bharat Lal contractors (Respondents No. 2 & 3). Thus, it is abundantly clear on record that the matter in controversy has been narrowed down in a short compass that whether the respondent No. 1, being principal employer had followed the basic and cardinal principles envisaged under the Act while terminating the services of the petitioner or not? It has been specifically pleaded from the side of the respondent No. 1 that the petitioner had been engaged for a specific time period through the contractor to which the allocation of work order has been issued for providing the manpower service in the Project, being awarded for a specific period throughout the year. As a matter of fact, the work order for outsourcing various works including data entry is awarded in the beginning of any financial year considering the various service by flouting short term notice with the prior approval of the competent authority. The services of the petitioner were also outsourced through local contractors, who deployed the petitioner as per requirement, as such, the onus to deploying the manpower lies with the contractor/agency as per the terms and conditions of the contract. Initially, the petitioner was an employee of the contractor and was deployed with HPPCL on outsource basis. In fact, the petitioner has also admitted in his cross-examination that his services were not at all engaged by Kashang Hydro Electric Project or HPPCL. Though, he has tried to improve his version by stating that he was engaged and terminated by respondent No. 1 but it is merely an afterthought expression and cannot replace the earlier version as deposed by him in his cross-examination.

30. Verily, much stress has been placed on record from the side of the petitioner to the agreement (PW-2/A), executed between the parties i.e. the representatives of HPPCL, the representatives Pariyojna Prabhavit Sabha, Village Pangi (effected community) before the Deputy Commissioner, Kinnaur on 7-7-2010 wherein it has been amicably agreed by all the concerned parties that 14 workers terminated by M/s HPPCL shall be provided livelihood by HPPCL till they got employment through HPPCL or some other agency. Seven new recruitments from Pangi village shall be done through M/s HCC Ltd., within 0-7 days from the date of call off strike subject to permission by the Hon'ble High Court. It is contended before me that the petitioner and eleven other workers were terminated by the respondent No.1 and with the intervention of Deputy Commissioner, Kinnaur, their services were restored on 19-8-2010 and a compromise was effected. Though, the petitioner has miserably failed to establish on record that initially he was engaged by respondent No. 1 i.e. HPPCL. Neither any appointment letter nor any termination letter has been placed on record. From the recital of the agreement dated 7-7-2010, executed before the Deputy Commissioner, Kinnaur. There was an agreement executed between the parties that the representatives of Project effected members shall be provided the livelihood by HPPCL. Such a recital shall not give any right to the petitioner that he was engaged/appointed by respondent No.1. More so, the recital of agreement (PW-2/A) dated 7-7-2010, shall not come in any way to substantiate the plea raised from the side of the petitioner. The initial burden lies on the petitioner to prove that he was not engaged by the contractors but by HPPCL.

31. Now, the question which arises for determination before this Tribunal that what relevancy, authenticity and legality attached to the writing dated 7-7-2010 (PW-2/A). All the recital made thereto in such writing amounts to a stop gap arrangement whereby it was resolved by the representatives of all the parties concerned to reconcile the matter. However, providing of livelihood by the respondent No. 1 to the workers, who were terminated by outsourcing agency/contractor, shall providing or offering any appointment/engagement to the petitioner with the respondent No. 1. It is quite apparent on the face of the record that the petitioner was not engaged by the respondent No. 1 directly rather he was engaged on outsource basis through contractor.

32. The next question arise before me that whether the termination of the services of the petitioner *w.e.f.* 1-7-2016, is violative of the provisions of the Act. Amongst arraying both the contractors, as the contesting respondents, one of them while contesting the claim petition averred that the petitioner has neither been engaged by the replying respondent nor terminated his services. The petitioner was engaged by the respondent No. 1. No legal or vested rights of the petitioner have been infringed by the respondent No. 3 in any manner. However, the petitioner as (PW-1) during cross-examination by respondent No. 3 admitted that he was working with respondent No. 1 and he was engaged by respondent No. 1. He was not engaged by respondent No. 3. Both the contractors are not known to him personally. He has not claimed any particular relief against contractors. All his service conditions were being maintained and supervised by respondent No. 1. All the contentions raised at bar are devoid of merits. In my humble opinion, the petitioner miserably failed to lead any cogent, clear and clinching evidence to establish on record that he was engaged by respondent No. 1. In any case, the petitioner has also failed to produce on record any documentary proof regarding his engagement, oral termination, service conditions and over all supervision and control by respondent No. 1. Mere oral deposition in the absence of any cogent documentary proof assumes no significance in the eyes of law. Furthermore, the averments made thereto in the reply filed by respondent No. 1 are fully corroborated by the respondent No. 1 witness Shri Mahender Kumar General Manager, Civil, HPPCL (RW-1), wherein he has categorically stated that the entire dues to the petitioner is shown to have been paid by the respondent. The petitioner was never engaged by respondent No. 1 in any field of work/job at any point of time. The services of the petitioner were engaged on outsource basis through the contractor to whom the respondent No. 1 has awarded the work orders from time to time. The petitioner was the employee of contractor and deployed with HPPCL, on outsource through contractors. Undoubtedly, there was an agreement executed before the Deputy Commissioner, Kinnaur on 7-7-2010 whereby the representatives of project effected members, representatives of HPCL and representatives of HCCL were signatory to the said writings. Simple, on the score that the officers of the HPPCL put their signatures to the said writing shall not provide any employment/engagement to the petitioner. The respondent witness categorically admitted that the petitioner filed complaint before the Deputy Commissioner, Kinnaur. The EPF of the petitioner was deducted by the contractor. He also admitted that the agreement bears the signatures of General Manager, Deputy General Manager of HPPCL respectively being representatives of HPPCL. However, he feigned ignorance that the petitioner was engaged as operator/supervisor. He admitted that after the issuance of the work orders, the same has been accepted by the contractors. Admittedly, the respondent No. 1 being principal employer had engaged the services of the petitioner through the contractors though there is a denial on the part of the contractors. It is now fairly established that the services of the petitioner were engaged by the contractors and deployed with HPPCL. It is also admitted position on record that the contractors while terminating the services of the petitioner is to comply with the requirement of the law. The very action on the part of the respondents while terminating the services of the petitioner has to fall within the four corners of the definition of "retrenchment" as envisaged under section 2-oo (bb) of the Act, hence, the termination of the services of the petitioner is held to be bad and nonest in the eyes of law. Since, the petitioner has completed the requirement of days as fixed by the Government for Tribal area, hence, he is also entitled for the protection of section 25-F of the Act. It is also admitted fact that before retrenching the services of the petitioner neither any notice had been issued nor any compensation has been paid. Therefore, in view of the above discussion, I am satisfied that the workman was terminated illegally and unjustifiably without complying with section 25-F of the Act, which provides as under:

"No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until :

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

- (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government for such authority as may be specified by the appropriate Government by notification in the Official Gazette".

33. So, in view of this enabling provision of the act, no workman employed in any industry, who has been in "continuous service" for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25-B of the Act, which in its material part reads:

"25B. Definition of continuous service. For the purposes of this Chapter;—

- (1) *a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;*
- (2) *where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—*
 - (a) *for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than.—*
 - (i) *one hundred and ninety days in the case of a workman employed below ground in a mine; and*
 - (ii) *two hundred and forty days, in any other case...."*

34. Since, the petitioner is proved to have completed more than 180 days (as applicable in Tribal area) during the period of twelve calendar months in the preceding year from the date of his retrenchment, his services could not have been terminated unless he was served with one month's mandatory notice and paid the retrenchment compensation, as envisaged under Section 25-F of the Act. Admittedly, the provisions of Section 25-F of the Act were not followed or complied with by the respondent in the latter and spirit. The respondent did not pay the retrenchment compensation to the petitioner, nor had issued any requisite notice to the petitioner.

35. In the back-drop of aforesaid events, it is held that the termination of the petitioner was in violation of the provisions of Sections 25-B and 25-F of the Act. The termination is held to be illegal, unlawful and unjustified.

36. Now, the question arises as to what relief, the workman is entitled to? Their Lordships of Hon'ble Supreme Court in an authority reported as The Workmen of M/s Firestone Tyre & Rubber Co. of India (Pvt.) Ltd. etc. vs. The Management & Ors. 1973 (1) SCC 813, Hon'ble Supreme Court observed as under:

"10. In a particular case, after setting aside the order of dismissal, whether a workman should be reinstated or paid compensation is, as held by this Court in *The Management of Panitole Tea Estate Vs. The workmen* (1971) 1 SCC 742 within the judicial decision of a Labour Court of Tribunal."

37. Similarly, Their Lordship of Hon'ble Delhi High Court in another authority reported as **Nehru Yuva Kendra Sangathan Vs. Union of India & Ors. 2000 IV AD (Delhi) 709, Hon'ble Delhi High Court** dealt with the question of reinstatement and back wages and observed as under:

"The decision of the Supreme Court rendered in the 1970s and 1980s that reinstatement with back wages was the norm in cases where the termination of the services of the workman was held inoperative. The decisions rendered in the 1990s, including the decision of the Constitution Bench in the Punjab Land Development and Reclamation Corporation Ltd., Chandigarh seem to suggest that compensation in lieu of reinstatement and back wages is now the norm. In any case, since I am bound to follow the decision of the Constitution Bench, I, therefore, conclude that reinstatement is not the inevitable consequence of quashing an order of termination; compensation can be awarded in lieu of reinstatement and back wages."

38. To combat with, I am persuaded to award compensation in lieu of reinstatement and back wages to the workman.

39. Similarly, Their Lordships of Hon'ble Supreme Court in another authority reported as **M.L. Binjolkar Vs. State of Madhya Pradesh, 2005 VI (S.C.) 413**, Hon'ble Supreme Court observed in paragraph 7 as under :

"Though the High Court has not specifically dealt with the question as to what would be the appropriate quantum, keeping in view the law laid down by this Court in various cases e.g. *Hindustan Motors Ltd. Vs. Tapanj Kumar Bhattarcharya & Anr.* (2002 (6) SCC 41), *Rajendra Prasad Arya Vs. State of Bihar* (200 (9) SCC 514), *Sonepat Cooperative Sugar Mills Ltd. Vs. Ajit Singh* (2005 (3) SCC 232), *Haryana State Cooperative Land Development Bank Vs. Neelam* (2005 (5) SCC 91), *Manager, Reserve Bank of India, Bangalore Vs. S. Mani & Ors.* (2005 (5) SCC 100) and *Allahabad Jal Sansthan Vs. Daya Shankar Rai & Anr.* (2005 (5) SCC 124), we do not find any scope for interference. The earlier view was that whenever there is interference with the order of termination or retirement, full back wages were the natural corollary. It has been laid down in the cases noted above that it would depend upon several factors and the court has to weigh the pros and cons of each case and to take a pragmatic view."

40. Their Lordship of Hon'ble Supreme Court in another authority reported as **U.P. State Brassware Corporation Limited and another Vs. Uday Narain Pandey, (2006) 1 SCC 479**, wherein the Hon'ble Supreme Court, observed as under:

"A Division Bench of this Court in **M.L. Binjolkar v. State of M.P. (2005) 6 SCC 224**, referring to a large number of decisions, held as under:

"The earlier view was that whenever there is interference with the order of termination or retirement, fullback wages were the natural corollary. It has been laid down in the cases noted above that it would depend upon several factors and the Court has to weigh the pros and cons of each case and to take a pragmatic view."

41. In the exposition of law enumerated hereinbefore, now, I would like to examine the merits of the case.

42. In the instant case, the petitioner was engaged by the respondent No.1 through contractors. The petitioner had worked in the capacity of workman. Since, the services of the petitioner were not directly engaged by the respondent No.1, hence, the only remedy available with this Tribunal is to award compensation amount to the petitioner in lump sum amount.

43. Recent developments, particularly the trends particularly much after the year 2007 shows that grant of compensation in lieu of reinstatement has gained precedence, more particularly, where the services of the workmen have been terminated because of procedural defects. In the case in hand too the termination is found to be illegal in view of the provisions Act, both ends of justice would thus be met, in case the petitioner is granted compensation in lieu of reinstatement thereof. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court titled as **Bharat Sanchar Nigam Ltd. Vs. Bhurumal (2014) 7 SCC 177** and further reiterated lately in **P. Karupiah (dead) through Legal Representatives Vs. General Manager, Thruuvalluvar Transport Corporation Ltd. (2018) 12 SCC 663** and **Rashtrasant Tukdoji Maharaj Technical Education Samnatha, Nagpur Vs. Prashant Manikrao Kubitkar (2018) 12 SCC 294**.

44. For the foregoing reasons and keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above, the petitioner is held entitled for a lump sum compensation amount of ₹ 70,000/- (₹ Seventy Thousand only) as lump sum compensation from the respondents, who are jointly and severally liable to pay the awarded amount to the petitioner. All these issues are decided accordingly.

Relief:

45. As a sequel to my above discussion and findings on issues No.1 to 3, the claim of the petitioner succeeds and is hereby allowed and the petitioner is awarded lump sum compensation of **₹ 70,000/- (Rupees Seventy Thousand only) to the workman, to be paid by the respondents jointly and severally within two months from the date of announcement** of the award, failing which interest at the rate of 9% (nine percent) would be payable by the respondent society to the workman. It is expressly made clear that apart from lump sum compensation, **the petitioner is entitled for all his legal dues i.e gratuity, leave encashment, EPF, ESI etc.**, admissible, if any, in accordance with law. The reference is disposed off in the aforesaid terms. Let a copy of this award be communicated to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 1st day of June, 2022.

Sd/-
(RAJESH TOMER),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

**IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 33 of 2018

Instituted on : 13-02-2018

Decided on : 01-06-2022

Kapil Dev s/o Shri Shobha Ram, r/o Village and Post Office, Pangi, Tehsil Kalpa, District Kinnaur, H.P. . *Petitioner.*

VERSUS

1. The General Manager, Kashang Hydro Electric Project, HPPCL, Knifed Building, IKHP, Reckong Peo, District Kinnaur, H.P.

2. Praveen Kumar, Contractor, VPO Pangi, Tehsil Kalpa, District Kinnaur, H.P.

3. Bharat Lal, Contractor, VPO Pangi, Tehsil Kalpa, District Kinnaur, H.P. . *Respondents.*

Reference petition under section 10 of the Industrial Disputes Act

For the petitioner : Shri Vinod Sharma, Adv.

For the Respondent No. 1 : Shri Manoj Chauhan, Adv.

For the Respondent No. 2 : Ex-parte.

For the Respondent No. 3 : Shri Arvind Negi, Adv.

AWARD

The following reference petition has been, received from the Appropriate Government, *vide* notification dated 02-11-2017, under section 10 of the Industrial Disputes Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, as under:

“Whether termination of services of Shri Kapil Dev s/o Shri Shobha Ram, r/o Village and Post Office, Pangi, Tehsil Kalpa, District Kinnaur, H.P. by (i) Praveen Kumar, Contractor, VPO Pangi, Tehsil Kalpa, District Kinnaur, H.P. (ii) Bharat Lal Contractor, VPO Pangi, Tehsil Kalpa, District Kinnaur, H.P. (iii) The General Manager, Kashang Hydro Electric Project, HPPCL, Knifed Building, IKHP, Reckong Peo, District Kinnaur, H.P. (Principal Employer) *w.e.f.* 1-7-2016 without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. To the fore, Shri Kapil Dev (hereinafter to be referred as the petitioner) has instituted the claim petition against the General Manager, Kashang Hydro Electric Project, HPPCL (**hereinafter to be referred as respondent No. 1**), Shri Praveen Kumar Contractor (**hereinafter to**

be referred as the respondent No. 2) and Shri Bharat Lal, Contractor (**hereinafter to be referred as the respondent No. 3)** under the provisions of the Act.

3. Key facts necessary for the disposal of the present reference petition are thus that the petitioner was engaged as supervisor for six years *w.e.f.* 8-7-2010 and remained posted as such till 29-6-2016. On 30-6-2016, the respondent company has illegally and without any notice has terminated the services of the petitioner. The oral termination of the services of the petitioner lead him to approach the respondents for his re-engagement into services but to no avail. Along-with the petitioner the services of eleven supervisors and two chowkidars have also been terminated. Earlier also on 19-8-2010, the services of the petitioner and eleven others workers were terminated and with the intervention of the Deputy Commissioner, Kinnaur their services were retained on 19-8-2010.

4. It is further averred that the respondents by colorable exercise of powers have terminated the services of the petitioner in gross violation of the provisions of sections 25-F, 25-G and 25-H of the Act. The respondent No. 1 being model employer cannot be expected to act in the manner and fashion in which they have dealt with the case of the petitioner. Due to the acts of omission and commission on the part of the respondents, the right to livelihood of the petitioner has been taken away, which is highly illegal and bad in the eyes of law. The right of life under Article 21 of the Constitution of India is being snatched by the respondent by resorting to illegal means. The petitioner has raised demand notice and served the same upon the respondent.

5. The following prayer clause has been appended, in the footnote of the petition, which reads as under:

“In view of the aforementioned submissions, it is most respectfully prayed that present petition may kindly be allowed with the following relief(s):

- (i) The respondent company may kindly be directed to re-engage the petitioner in service as supervisor at the same place where he was working prior to his oral illegal termination.
- (ii) The respondent may kindly be directed to grant all consequential benefits to the petitioner such as seniority, arrears of back-wages etc.”

6. The lis was resisted and contested by respondent No. 1 by filing written reply wherein preliminary objections of maintainability and the petitioner is contract employee engaged by the respondent company have been raised.

7. On merits, it is submitted that the services of the petitioner were engaged for specific time period through contractors to whom work order for providing manpower service in the project was awarded for a specific period throughout the year. The work order was awarded for outsourcing various job/works including data entry/attending/serving in the field and office. The onus to engage the workers lies on the contractors. The answering respondent has nothing to do with the employment of the petitioner. The petitioner was the employee of contractor and deployed with HPPCL on outsource basis through contractor. The requirement of data entry/attending/security services from the local contractor had shrunk in the year 2016 due to completion of construction work of Kashang Hydro Electric Project Stage-1. The services of the petitioner along-with other eleven workers were not terminated by the respondent company, however, their services were hired by M/s HPPCL on contract basis. It is therefore prayed that in view of the submission made hereinabove, the claim petition of the petitioner may kindly be dismissed in the interest of law and justice and justice be done.

8. The respondent No. 2 *i.e.* Shri Praveen Kumar, Contractor has been duly served in accordance with law but he has failed to appear before this Court, hence, vide order dated 10-7-2018, he was proceeded against *ex-parte*.

9. Reply on behalf of respondent No. 3 was filed wherein preliminary objections qua the petitioner not come to the Court with clean hand and maintainability have been taken. On merits, it is submitted that the workman has never been engaged by the respondent No. 3, hence, there is no question of illegal termination of the services of the petitioner *w.e.f.* 30-6-2016. It is therefore prayed that the petition may kindly be dismissed.

10. While filing rejoinder, the petitioner controverted the averments made thereto in the replies filed by respondent No. 1 and 3, and reaffirmed and reiterated those in the petition.

11. On elucidating the pleading of parties, the following issues were struck down for its final determination *vide* Court order dated 30-05-2019 :—

1. Whether the termination of the petitioner is violative of the provisions of section 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 as alleged. If so, to what relief the petitioner is entitled to? . . . *OPP.*
2. Whether the reference is not maintainable as alleged. If so its effects thereto? . . . *OPR.*
3. Whether the services of the petitioner was hired through a contractor and he was not the employee of respondent No. 1 as alleged. If so its effect thereto? . . . *OPR.*
4. Relief

12. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

13. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

14. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue No. 1	Yes. Entitled to lump sum compensation of ₹ 70,000/-. (₹ Seventy Thousand only)
Issue No. 2	No
Issue No. 3	Yes
Relief	Reference is answered in affirmative, as per operative part of award.

REASONS FOR FINDINGS

Issues No.1 to 3 :

15. All these issues are intermingled and inter connected, as mutually existed and required the common appreciation of evidence, being taken up together for the purpose of their determination and adjudication.

16. To substantiate his case, the petitioner namely Shri Kapil Dev appeared into the witness dock as (PW-1) to depose that he was engaged as supervisor on 7-7-2010 in project run by respondent No. 1 at Reckong Peo. He continued as such till 30-8-2016 and his services were dispensed with after 30-6-2016 orally without issuing any notice. He approached the respondent for his re-engagement but they refused to give him any work. After his illegal termination, six persons had been engaged by the respondent as attendants. The respondent had also engaged electricians and other tradesmen. Earlier in 2010, the respondent had terminated their services and they had been re-engaged after the respondents entered into an agreement with the representatives of the village in the presence of the Deputy Commissioner vide Mark P-1. Their land also been acquired for the project and as such he fall under the category of beneficiaries and the respondent had illegally terminated his services. He prayed that he be re-engaged with all consequential benefits including back-wages. He has placed on record the detail of the outsourced manpower as received under RTI Act, Mark A-2 and the application made by the 14 terminated workers in the year 2010 Mark A-3.

17. In cross-examination, on behalf of respondent No. 1, he admitted that initially he was not engaged with the respondent No. 1. He further admitted that he was not issued any appointment letter by respondent No. 1 nor any I card was issued by them. He denied that he was never working with the HPPCL and he had been engaged through a contractor. He admitted that his name is not reflected in (PW-2/A). He admitted that he have no documents to show that his attendance was marked with the HPPCL. He denied that he was an employee of respondent No. 3. He also admitted that he has not placed on record anything to show that he was a beneficiary. When cross-examined on behalf of respondent No. 3, he admitted that he was working with respondent No. 3 and he was engaged by respondent No. 3. He further admitted that the respondent No. 3 had never engaged him. He also admitted that his services were terminated by respondent No. 1. He admitted that his salary was paid by respondent No. 3.

18. Shri Lobha Singh, Clerk in the office of Deputy Commissioner, Kinnaur has appeared into the witness box as (PW-2) and proved on record agreement (PW-2/A). In cross-examination on behalf of respondent No. 1, he admitted that (PW-2/A) does not reflect that the petitioner was privy to the terms of the agreement and his name is not reflected in (PW-2/A). When cross-examined on behalf of respondent No. 3, he admitted that the name of the contractor is also not mentioned in (PW-2/A) nor it bears his signatures.

19. PW-3 Shri Man Chand, President of Kashang Pariyojna Prabhavit Sabha, Village Pangi has deposed that the agreement entered between the HPPCL and the representatives of Pariyojna Prabhavit Sabha, Village Pangi was in respect of 14 workers terminated by the HPPCL which included the petitioner and (PW-2/A) bears his signatures as the President of the Sabha. In cross-examination on behalf of respondent No.1, he admitted that (PW-2/A) does not bears the name of the petitioner. He denied that the HPCL had re-engaged the petitioner after the agreement.

20. In order to rebut, the respondent No. 1 examined one Shri Mahender Kumar, General Manager, Civil as (RW-1), who tendered in evidence his affidavit (RW-1/A) wherein he reiterated almost all the averments as made in the reply. He also tendered into evidence letter dated 31-3-2008 (RW-1/B), tender dated 31-3-2008 (RW-1/C), letter dated 7-11-2008 (RW-1/D), work order dated 1-1-2008 (RW-1/E), conditions (RW-1/F), work order dated 27-12-2008 (RW-1/G), conditions (RW-1/H), letter dated 2-3-2009 (RW-1/J), work order dated 2-3-2009 (RW-1/K), conditions (RW-1/L), work order dated 31-3-2009 (RW-1/M), conditions (RW-1/N), letter dated 1-12-2009 (RW-1/O), check list (RW-1/P), work order dated 1-12-2009 (RW-1/Q), conditions (RW-1/R), letter dated 30-9-2011 (RW-1/S), work order dated 30-9-2011 (RW-1/T), conditions (RW-1/U), letter dated 27-5-2014 (RW-1/V), work order dated 19-9-2011 (RW-1/W), letter dated 13-3-2011 (RW-1/X), letter dated 20-9-2012 (RW-1/Y), work order dated 20-9-2012 (RW-1/Z),

letter dated 31-12-2012 (RW-1/AA), work order dated 31-12-2012 (RW-1/AB), letter dated 22-9-2014 (RW-1/AC), letter dated 30-3-2015 (RW-1/AD), work order dated 30-3-2015 (RW-1/AE), letter dated 31-3-2016 (RW-1/AF), work order dated 31-3-2016 (RW-1/AG), letter dated 11-5-2016 (RW-1/AH), work order dated 11-5-2016 (RW-1/AJ), work order dated 31-3-2016 (RW-1/AK) and work order dated 31-3-2016 (RW-1/AL).

21. In cross-examination, on behalf of petitioner he denied that the petitioner worked as supervisor in their project. He denied that the petitioner was terminated in the year, 2010. He admitted that there was a compromise effected between the parties before the Deputy Commissioner, Kinnaur on 7-7-2010 that the services of the petitioner shall be reinstated. He admitted that the land of the petitioner was acquired for setting up of the project. He denied that the petitioner had filed a complaint to them for not deducting the EPF. When cross-examined on behalf of respondent No. 3, he admitted that the petitioners were working with the respondent since 2010. He further admitted that as per the work orders the nature of work is computer operator.

22. Shri Arvind Negi, Advocate for respondent No. 3 *vide* his separate statement dated 23-3-2022 has stated that he does not want to lead any evidence *i.e.* oral and documentary on behalf of the respondent No. 3.

23. This is the entire oral as well as documentary evidence led from the side of the parties.

24. Shri Vinod Sharma, Learned counsel for the petitioner has contended with all vehemence that the petitioner was engaged as supervisor by respondent No.1 in the year 2010 and his services were illegally terminated by the respondent No.1 by an oral dismissal order in the year 2016. Along-with the petitioner as many as eleven other supervisors and two chowkidars were also terminated. The matter was reconciled and with the intervention of the Deputy Commissioner, Kinnaur, their services were re-engaged. He has also argued that the termination of the services of the petitioner is in violation of the salient provision of the Act as well as Articles 14, 16 and 21 of the Constitution of India.

25. *Per contra*, Shri Manoj Chauhan, Ld. Counsel for the respondent No.1 argued that there exists no employee-employer relationship between petitioner and respondent No.1. He further argued that the petitioner was never engaged by the respondent No.1 and no appointment letter has been issued to him and even no identity card has been placed on record by him. The petitioner has also failed to place on record the statement of account showing the salary allegedly to be paid by respondent No. 1. No documentary proof showing the contribution towards EPF and ESI has been placed on record. The petitioner has alleged that he was engaged as supervisor by the respondent No.1, whereas the work order has been issued for data entry operator. The petitioner was the employee of the contractor, who deputed the petitioner with HPPCL. He prayed that the claim petition may kindly be dismissed.

26. Shri Arvind Negi, Ld. Counsel for the respondent No. 3, has contended that the petitioner neither pleaded nor proved on record that he was engaged by respondent No. 3. As a matter of fact, the petitioner was engaged by HPPCL. The petitioner has miserably failed to prove that he was the employee of respondent No. 3. He also prayed for the dismissal of the claim petition.

27. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the petitioner, as well Learned Counsel for the respondents No. 1 & 3 and have also scrutinized the entire case record with minute care, caution and circumspection.

28. Admittedly, the petitioner by way of placing on record oral and documentary proof had tried to establish on record to prove that the petitioner has been engaged and working with the respondent No.1 till the time of his termination. The respondent No.1 *i.e.* Kashang Hydro Electric Project under HPPCL had engaged the services of the petitioner who worked there for six years *i.e.* 2010 to 2016. However, the petitioner himself deposed that Kashang Hydroelectric Project had engaged his services, in the very opening line of his cross-examination. According to him he was engaged by HPPCL. The respondent No.1 had issued the work orders inviting the job through contractors. However, the petitioner again twisted the fact by deposing that he was working with respondent No.1 and engaged by him. He has also admitted that there were many contractors registered with HPPCL.

29. As a matter of fact, the present reference has been sent by the appropriate government qua the termination of the services of the petitioner by the respondents No. 1 to 3 w.e.f. 1-7-2016, without complying with the provisions of the Act, the petitioner having been engaged as a supervisor by the principal employer *i.e.* Kashang Hydro Electric Project, HPPCL through the contractors, on outsource basis namely Shri Praveen Kumar and Bharat Lal contractors (Respondents No. 2 & 3). Thus, it is abundantly clear on record that the matter in controversy has been narrowed down in a short compass that whether the respondent No. 1, being principal employer had followed the basic and cardinal principles envisaged under the Act while terminating the services of the petitioner or not? It has been specifically pleaded from the side of the respondent No. 1 that the petitioner had been engaged for a specific time period through the contractor to which the allocation of work order has been issued for providing the manpower service in the Project, being awarded for a specific period throughout the year. As a matter of fact, the work order for outsourcing various works including data entry is awarded in the beginning of any financial year considering the various service by flouting short term notice with the prior approval of the competent authority. The services of the petitioner were also outsourced through local contractors, who deployed the petitioner as per requirement, as such, the onus to deploying the manpower lies with the contractor/agency as per the terms and conditions of the contract. Initially, the petitioner was an employee of the contractor and was deployed with HPPCL on outsource basis. In fact, the petitioner has also admitted in his cross-examination that his services were not at all engaged by Kashang Hydro Electric Project or HPPCL. Though, he has tried to improve his version by stating that he was engaged and terminated by respondent No. 1 but it is merely an afterthought expression and cannot replace the earlier version as deposed by him in his cross-examination.

30. Verily, much stress has been placed on record from the side of the petitioner to the agreement (PW-2/A), executed between the parties *i.e.* the representatives of HPPCL, the representatives Pariyojna Prabhavit Sabha, Village Pangi (effected community) before the Deputy Commissioner, Kinnaur on 7-7-2010 wherein it has been amicably agreed by all the concerned parties that 14 workers terminated by M/s HPPCL shall be provided livelihood by HPPCL till they got employment through HPPCL or some other agency. Seven new recruitments from Pangi village shall be done through M/s HCC Ltd., within 0-7 days from the date of call off strike subject to permission by the Hon'ble High Court. It is contended before me that the petitioner and eleven other workers were terminated by the respondent No.1 and with the intervention of Deputy Commissioner, Kinnaur, their services were restored on 19-8-2010 and a compromise was effected. Though, the petitioner has miserably failed to establish on record that initially he was engaged by respondent No.1 *i.e.* HPPCL. Neither any appointment letter nor any termination letter has been placed on record. From the recital of the agreement dated 7-7-2010, executed before the Deputy Commissioner, Kinnaur. There was an agreement executed between the parties that the representatives of Project effected members shall be provided the livelihood by HPPCL. Such a recital shall not give any right to the petitioner that he was engaged/appointed by respondent No. 1. More so, the recital of agreement (PW-2/A) dated 7-7-2010, shall not come in any way to substantiate the plea raised from the side of the petitioner. The initial burden lies on the petitioner to prove that he was not engaged by the contractors but by HPPCL.

31. Now, the question which arises for determination before this Tribunal that what relevancy, authenticity and legality attached to the writing dated 7-7-2010 (PW-2/A). All the recital made thereto in such writing amounts to a stop gap arrangement whereby it was resolved by the representatives of all the parties concerned to reconcile the matter. However, providing of livelihood by the respondent No.1 to the workers, who were terminated by outsourcing agency/contractor, shall providing or offering any appointment/engagement to the petitioner with the respondent No. 1. It is quite apparent on the face of the record that the petitioner was not engaged by the respondent No.1 directly rather he was engaged on outsource basis through contractor.

32. The next question arise before me that whether the termination of the services of the petitioner *w.e.f.* 1-7-2016, is violative of the provisions of the Act. Amongst arraying both the contractors, as the contesting respondents, one of them while contesting the claim petition averred that the petitioner has neither been engaged by the replying respondent nor terminated his services. The petitioner was engaged by the respondent No. 1. No legal or vested rights of the petitioner have been infringed by the respondent No. 3 in any manner. However, the petitioner as (PW-1) during cross-examination by respondent No. 3 admitted that he was working with respondent No. 1 and he was engaged by respondent No.1. He was not engaged by respondent No.3. Both the contractors are not known to him personally. He has not claimed any particular relief against contractors. All his service conditions were being maintained and supervised by respondent No. 1. All the contentions raised at bar are devoid of merits. In my humble opinion, the petitioner miserably failed to lead any cogent, clear and clinching evidence to establish on record that he was engaged by respondent No.1. In any case, the petitioner has also failed to produce on record any documentary proof regarding his engagement, oral termination, service conditions and over all supervision and control by respondent No. 1. Mere oral deposition in the absence of any cogent documentary proof assumes no significance in the eyes of law. Furthermore, the averments made thereto in the reply filed by respondent No. 1 are fully corroborated by the respondent No. 1 witness Shri Mahender Kumar General Manager, Civil, HPPCL (RW-1), wherein he has categorically stated that the entire dues to the petitioner is shown to have been paid by the respondent. The petitioner was never engaged by respondent No. 1 in any field of work/job at any point of time. The services of the petitioner were engaged on outsource basis through the contractor to whom the respondent No. 1 has awarded the work orders from time to time. The petitioner was the employee of contractor and deployed with HPPCL, on outsource through contractors. Undoubtedly, there was an agreement executed before the Deputy Commissioner, Kinnaur on 7-7-2010 whereby the representatives of project effected members, representatives of HPCL and representatives of HCCL were signatory to the said writings. Simple, on the score that the officers of the HPPCL put their signatures to the said writing shall not provide any employment/engagement to the petitioner. The respondent witness categorically admitted that the petitioner filed complaint before the Deputy Commissioner, Kinnaur. The EPF of the petitioner was deducted by the contractor. He also admitted that the agreement bears the signatures of General Manager, Deputy General Manager of HPPCL respectively being representatives of HPPCL. However, he feigned ignorance that the petitioner was engaged as operator/supervisor. He admitted that after the issuance of the work orders, the same has been accepted by the contractors. Admittedly, the respondent No.1 being principal employer had engaged the services of the petitioner through the contractors though there is a denial on the part of the contractors. It is now fairly established that the services of the petitioner were engaged by the contractors and deployed with HPPCL. It is also admitted position on record that the contractors while terminating the services of the petitioner is to comply with the requirement of the law. The very action on the part of the respondents while terminating the services of the petitioner has to fall within the four corners of the definition of “retrenchment” as envisaged under section 2-oo (bb) of the Act, hence, the termination of the services of the petitioner is held to be bad and nonest in the eyes of law. Since, the petitioner has completed the requirement of days as fixed by the Government for Tribal area, hence, he is also entitled for the protection of section 25-F of

the Act. It is also admitted fact that before retrenching the services of the petitioner neither any notice had been issued nor any compensation has been paid. Therefore, in view of the above discussion, I am satisfied that the workman was terminated illegally and unjustifiably without complying with section 25-F of the Act, which provides as under:

"No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until :

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government for such authority as may be specified by the appropriate Government by notification in the Official Gazette".

33. So, in view of this enabling provision of the act, no workman employed in any industry, who has been in "continuous service" for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25-B of the Act, which in its material part reads:

"25B. Definition of continuous service. For the purposes of this Chapter,—

- (1) *a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;*
- (2) *where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—*
 - (a) *for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—*
 - (i) *one hundred and ninety days in the case of a workman employed below ground in a mine; and*
 - (ii) *two hundred and forty days, in any other case...."*

34. Since, the petitioner is proved to have completed more than 180 days (as applicable in Tribal area) during the period of twelve calendar months in the preceding year from the date of his retrenchment, his services could not have been terminated unless he was served with one month's mandatory notice and paid the retrenchment compensation, as envisaged under Section 25-F of the

Act. Admittedly, the provisions of Section 25-F of the Act were not followed or complied with by the respondent in the latter and spirit. The respondent did not pay the retrenchment compensation to the petitioner, nor had issued any requisite notice to the petitioner.

35. In the back-drop of aforesaid events, it is held that the termination of the petitioner was in violation of the provisions of Sections 25-B and 25-F of the Act. The termination is held to be illegal, unlawful and unjustified.

36. Now, the question arises as to what relief, the workman is entitled to? Their Lordships of Hon'ble Supreme Court in an authority reported as The Workmen of **M/s Firestone Tyre & Rubber Co. of India (Pvt.) Ltd. etc. vs. The Management & Ors. 1973 (1) SCC 813**, Hon'ble Supreme Court observed as under:

"10. In a particular case, after setting aside the order of dismissal, whether a workman should be reinstated or paid compensation is, as held by this Court in The Management of Panitole Tea Estate Vs. The workmen (1971) 1 SCC 742 within the judicial decision of a Labour Court of Tribunal."

37. Similarly, Their Lordship of Hon'ble Delhi High Court in another authority reported as **Nehru Yuva Kendra Sangathan Vs. Union of India & Ors. 2000 IV AD (Delhi) 709, Hon'ble Delhi High Court** dealt with the question of reinstatement and back wages and observed 28 as under:

"The decision of the Supreme Court rendered in the 1970s and 1980s that reinstatement with back wages was the norm in cases where the termination of the services of the workman was held inoperative. The decisions rendered in the 1990s, including the decision of the Constitution Bench in the Punjab Land Development and Reclamation Corporation Ltd., Chandigarh seem to suggest that compensation in lieu of reinstatement and back wages is now the norm. In any case, since I am bound to follow the decision of the Constitution Bench, I, therefore, conclude that reinstatement is not the inevitable consequence of quashing an order of termination; compensation can be awarded in lieu of reinstatement and back wages."

38. To combat with, I am persuaded to award compensation in lieu of reinstatement and back wages to the workman.

39. Similarly, Their Lordships of Hon'ble Supreme Court in another authority reported as **M.L. Binjolkar Vs. State of Madhya Pradesh, 2005 VI (S.C.) 413**, Hon'ble Supreme Court observed in paragraph 7 as under :

"Though the High Court has not specifically dealt with the question as to what would be the appropriate quantum, keeping in view the law laid down by this Court in various cases e.g. Hindustan Motors Ltd. Vs. Tapanj Kumar Bhattarcharya & Anr. (2002 (6) SCC 41), Rajendra Prasad Arya Vs. State of Bihar (200 (9) SCC 514), Sonepat Cooperative Sugar Mills Ltd. Vs. Ajit Singh (2005 (3) SCC 232), Haryana State Cooperative Land Development Bank Vs. Neelam (2005 (5) SCC 91), Manager, Reserve Bank of India, Bangalore Vs. S. Mani & Ors. (2005 (5) SCC 100) and Allahabad Jal Sansthan Vs. Daya Shankar Rai & Anr. (2005 (5) SCC 124), we do not find any scope for interference. The earlier view was that whenever there is interference with the order of termination or retirement, full back wages were the natural corollary. It has been laid down in the cases noted above that it would depend upon several factors and the court has to weigh the pros and cons of each case and to take a pragmatic view."

40. Their Lordship of Hon'ble Supreme Court in another authority reported as **U.P. State Brassware Corporation Limited and another Vs. Uday Narain Pandey, (2006) 1 SCC 479,** wherein the Hon'ble Supreme Court, observed as under:

“A Division Bench of this Court in **M.L. Binjolkar v. State of M.P. (2005) 6 SCC 224,** referring to a large number of decisions, held as under:

“The earlier view was that whenever there is interference with the order of termination or retirement, fullback wages were the natural corollary. It has been laid down in the cases noted above that it would depend upon several factors and the Court has to weigh the pros and cons of each case and to take a pragmatic view.”

41. In the exposition of law enumerated hereinbefore, now, I would like to examine the merits of the case.

42. In the instant case, the petitioner was engaged by the respondent No. 1 through contractors. The petitioner had worked in the capacity of workman. Since, the services of the petitioner were not directly engaged by the respondent No. 1, hence, the only remedy available with this Tribunal is to award compensation amount to the petitioner in lump sum amount.

43. Recent developments, particularly the trends particularly much after the year 2007 shows that grant of compensation in lieu of reinstatement has gained precedence, more particularly, where the services of the workmen have been terminated because of procedural defects. In the case in hand too the termination is found to be illegal in view of the provisions Act, both ends of justice would thus be met, in case the petitioner is granted compensation in lieu of reinstatement thereof. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court titled as **Bharat Sanchar Nigam Ltd. Vs. Bhurumal (2014) 7 SCC 177** and further reiterated lately in **P. Karupaiah (dead) through Legal Representatives Vs. General Manager, Thruuvalluvar Transport Corporation Ltd. (2018) 12 SCC 663 and Rashtrasant Tukdoji Maharaj Technical Education Samnsta, Nagpur Vs. Prashant Manikrao Kubitkar (2018) 12 SCC 294.**

44. For the foregoing reasons and keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above, the petitioner is held entitled for a lump sum compensation amount of ₹ 70,000/- (₹ Seventy Thousand only) as lump sum compensation from the respondents, who are jointly and severally liable to pay the awarded amount to the petitioner. All these issues are decided accordingly.

Relief:

45. As a sequel to my above discussion and findings on issues No. 1 to 3, the claim of the petitioner succeeds and is hereby allowed and the petitioner is awarded lump sum compensation of ₹ 70,000/- (**Rupees Seventy Thousand only**) to the workman, to be paid by the respondents jointly and severally within two months from the date of announcement of the award, failing which interest at the rate of 9% (nine percent) would be payable by the respondents to the workman. It is expressly made clear that apart from lump sum compensation, **the petitioner is entitled for all his legal dues i.e gratuity, leave encashment, EPF, ESI etc.,** admissible if any, in accordance with law. The reference is disposed off in the aforesaid terms. Let a copy of this award be communicated to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 1st day of June, 2022.

Sd/-
(RAJESH TOMER),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

**IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 53 of 2018

Instituted on : 01-03-2018

Decided on : 01-06-2022

Prem Chand s/o Shri Birma Chand r/o Village and Post Office, Pangti, Tehsil Kalpa, District
Kinnaur, H.P. . *Petitioner.*

VERSUS

1. The General Manager, Kashang Hydro Electric Project, HPPCL, Knifed Building,
IKHP, Reckong Peo, District Kinnaur, H.P.

2. Vijay Kumar Negi, Government Contractor, VPO Pangti, Tehsil Kalpa, District
Kinnaur, H.P.

3. Karma Lama, Government Contractor, VPO Pangti, Tehsil Kalpa, District Kinnaur,
H.P.

4. Hirpal Singh, Government Contractor, VPO Pangti, Tehsil Kalpa, District Kinnaur,
H.P.

5. Bharat Lal, Contractor, VPO Pangti, Tehsil Kalpa, District Kinnaur, H.P. . *Respondents.*

Reference petition under section 10 of the Industrial Disputes Act

For the petitioner : Shri Vinod Sharma, Adv.

For the Respondent No. 1 : Shri Manoj Chauhan, Adv.

For the Respondents No. 2 to 4 : Ex-parte.

For the Respondent No. 5 : Shri Arvind Negi, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government, *vide*
notification dated 01-01-2018, under section 10 of the Industrial Disputes Act, 1947 (**hereinafter
referred to be as the Act**), for its legal adjudication, as under:

“Whether termination of services of Shri Prem Chand s/o Shri Birma Chand r/o Village and Post Office, Pangti, Tehsil Kalpa, District Kinnaur, H.P. by (i) Shri Vijay Kumar Negi, Government Contractor, VPO Pangti, Tehsil Kalpa, District Kinnaur, H.P. (ii) Shri Karam Lama, Government Contractor, VPO Pangti, Tehsil Kalpa, District Kinnaur, H.P., (iii) Shri Hirpal Singh, Government Contractor, VPO Pangti, Tehsil Kalpa, District Kinnaur, H.P. (iv) Bharat Lal, Contractor, VPO Pangti, Tehsil Kalpa, District Kinnaur, H.P. (v) The General Manager, Kashang Hydro Electric Project, HPPCL, Knifed Building, IKHP, Reckong Peo, District Kinnaur, H.P. (Principal Employer) *w.e.f.* 1-7-2016 without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. To the fore, Shri Prem Chand (hereinafter to be referred as the petitioner) has instituted the claim petition against the General Manager, Kashang Hydro Electric Project, HPPCL (**hereinafter to be referred as respondent No. 1**), Shri Vijay Kumar, Contractor (**hereinafter to be referred as the respondent No. 2**), Shri Karam Lama, Contractor (hereinafter to be referred as respondent No. 3), Shri Hirpal Singh, Contractor (hereinafter to be referred as respondent No. 4) and Shri Bharat Lal, Contractor (**hereinafter to be referred as the respondent No. 5**) under the provisions of the Act.

3. Key facts necessary for the disposal of the present reference petition are thus that the petitioner was engaged as chowkidar for ten years *w.e.f.* 01-08-2007 and worked as such till 7-7-2016 on which date the respondent company has illegally and without any notice has terminated the services of the petitioner. The oral termination of the services of the petitioner lead him to approach the respondents for his re-engagement into services but to no avail. Along-with the petitioner the services of eleven persons have also been terminated. Earlier also on 19-8-2010, the services of the petitioner and eleven others workers were terminated and with the intervention of the Deputy Commissioner, Kinnaur their services were retained on 19-8-2010.

4. It is further averred that the respondents by colorable exercise of powers have terminated the services of the petitioner in gross violation of the provisions of sections 25-F, 25-G and 25-H of the Act. The respondent No. 1 being model employer cannot be expected to act in the manner and fashion in which they have dealt with the case of the petitioner. Due to the acts of omission and commission on the part of the respondents, the right to livelihood of the petitioner has been taken away, which is highly illegal and bad in the eyes of law. The right of life under Article 21 of the Constitution of India is being snatched by the respondent by resorting to illegal means. The petitioner has raised demand notice and served the same upon the respondent.

5. The following prayer clause has been appended, in the footnote of the petition, which reads as under:

“In view of the aforementioned submissions, it is most respectfully prayed that present petition may kindly be allowed with the following relief(s):

- (i) The respondent company may kindly be directed to re-engage the petitioner in service as chowkidar at the same place where he was working prior to his oral illegal termination.
- (ii) The respondent may kindly be directed to grant all consequential benefits to the petitioner such as seniority, arrears of back-wages etc.”

6. The lis was resisted and contested by respondent No.1 by filing written reply wherein preliminary objections of maintainability and the petitioner is contract employee engaged by the respondent company have been raised.

7. On merits, it is submitted that the services of the petitioner were engaged for specific time period through contractors to whom work order for providing manpower service in the project was awarded for a specific period throughout the year. The work order was awarded for outsourcing various job/works including data entry/attending/serving in the field and office. The onus to engage the workers lies on the contractors. The answering respondent has nothing to do with the employment of the petitioner. The petitioner was the employee of contractor and deployed with HPPCL on outsource basis through contractor. The requirement of data entry/attending/security services from the local contractor had shrunk in the year 2016 due to completion of construction work of Kashang Hydro Electric Project Stage-1. The services of the petitioner along-with other eleven workers were not terminated by the respondent company, however, their services were hired by M/s HPPCL on contract basis. It is therefore prayed that in view of the submission made hereinabove, the claim petition of the petitioner may kindly be dismissed in the interest of law and justice and justice be done.

8. The respondents No. 2 to 4 *i.e.* Vijay Kumar Negi, Government Contractor, VPO Pangi, Tehsil Kalpa, District Kinnaur, H.P, Karma Lama, Contractor, VPO Pangi, Tehsil Kalpa, District Kinnaur, H.P and Hirpal Singh, Contractor, VPO Pangi, Tehsil Kalpa, District Kinnaur, H.P. have been duly served in accordance with law but they have failed to appear before this Court, hence, vide order dated 24-9-2018 and 7-5-2019, they were proceeded against ex-parte.

9. By filing separate reply, respondent No. 5 resisted and contested the claim of the petitioner wherein preliminary objections regarding concealment of material facts, no legal and vested right of the petitioner has been infringed or violated, the petitioner has never been engaged by respondent No. 5 and maintainability have been raised. On merits it is contended that the petitioner has never been engaged by the replying respondent and there is no question of illegal termination/dismissal from service *w.e.f.* 30-6-2016. It is therefore prayed that the claim petition may kindly be dismissed.

10. While filing rejoinder, the petitioner controverted the averments made thereto in the replies filed by respondent No. 1 and reaffirmed and reiterated those in the petition.

11. On elucidating the pleading of parties, the following issues were struck down for its final determination vide Court order dated 30-05-2019:—

1. Whether the termination of the petitioner is violative of the provisions of section 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 as alleged. If so, to what relief the petitioner is entitled to? . . .*OPP.*
2. Whether the reference is not maintainable as alleged. If so its effects thereto? . . .*OPR.*
3. Whether the services of the petitioner was hired through a contractor and he was not the employee of respondent No. 1 as alleged. If so its effect thereto? . . .*OPR.*
4. Relief

12. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

13. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

14. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue No. 1	Yes. Entitled to lump sum compensation of ₹ 70,000/-. (₹ Seventy Thousand only)
Issue No. 2	No
Issue No. 3	Yes
Relief	Reference is answered in affirmative, as per operative part of award.

REASONS FOR FINDINGS

Issues No.1 to 3:

15. All these issues are intermingled and inter connected, as mutually existed and required the common appreciation of evidence, being taken up together for the purpose of their determination and adjudication.

16. To substantiate his case, the petitioner namely Shri Prem Chand appeared into the witness dock as (PW-1) to depose that he was engaged as chowkidar on 1-8-2010 in project run by respondent No. 1 at Reckong Peo. He continued as such till 30-8-2016 and his services were dispensed with after 30-6-2016 orally without issuing any notice. He approached the respondent for his re-engagement but they refused to give him any work. After his illegal termination, six persons had been engaged by the respondent as attendants. The respondent had also engaged electricians and other tradesmen. Earlier in 2010, the respondent had terminated their services and they had been re-engaged after the respondents entered into an agreement with the representatives of the village in the presence of the Deputy Commissioner vide Mark P-1. Their land also been acquired for the project and as such he fall under the category of beneficiaries and the respondent had illegally terminated his services. He prayed that he be re-engaged with all consequential benefits including back-wages. He has placed on record the detail of the outsourced manpower as received under RTI Act, Mark A-2 and the application made by the 14 terminated workers in the year 2010 Mark A-3.

17. In cross-examination, on behalf of respondent No. 1, he admitted that initially he was not engaged with the respondent No. 1. He further admitted that he was not issued any appointment letter by respondent No. 1 nor any I card was issued by them. He denied that he was never working with the HPPCL and he had been engaged through a contractor. He admitted that his name is not reflected in (PW-2/A). He admitted that he have no documents to show that his attendance was marked with the HPPCL. He denied that he was an employee of respondent No. 3. He also admitted that he has not placed on record anything to show that he was a beneficiary. When cross-examined on behalf of respondent No. 3, he admitted that he was working with respondent No. 1 and he was engaged by respondent No. 1. He further admitted that the respondent No. 3 had never engaged him. He also admitted that his services were terminated by respondent No. 1. He admitted that his salary was paid by respondent No. 1.

18. In order to rebut, the respondent No. 1 examined one Shri Mahender Kumar, General Manager, Civil as (RW-1), who tendered in evidence his affidavit (RW-1/A) wherein he reiterated almost all the averments as made in the reply. He also tendered into evidence letter dated 31-3-2008 (RW-1/B), tender dated 31-3-2008 (RW-1/C), letter dated 7-11-2008 (RW-1/D), work

order dated 1-1-2008 (RW-1/E), conditions (RW-1/F), work order dated 27-12-2008 (RW-1/G), conditions (RW-1/H), letter dated 2-3-2009 (RW-1/J), work order dated 2-3-2009 (RW-1/K), conditions (RW-1/L), work order dated 31-3-2009 (RW-1/M), conditions (RW-1/N), letter dated 1-12-2009 (RW-1/O), check list (RW-1/P), work order dated 1-12-2009 (RW-1/Q), conditions (RW-1/R), letter dated 30-9-2011 (RW-1/S), work order dated 30-9-2011 (RW-1/T), conditions (RW-1/U), letter dated 27-5-2014 (RW-1/V), work order dated 19-9-2011 (RW-1/W), letter dated 13-3-2011 (RW-1/X), letter dated 20-9-2012 (RW-1/Y), work order dated 20-9-2012 (RW-1/Z), letter dated 31-12-2012 (RW-1/AA), work order dated 31-12-2012 (RW-1/AB), letter dated 22-9-2014 (RW-1/AC), letter dated 30-3-2015 (RW-1/AD), work order dated 30-3-2015 (RW-1/AE), letter dated 31-3-2016 (RW-1/AF), work order dated 31-3-2016 (RW-1/AG), letter dated 11-5-2016 (RW-1/AH), work order dated 11-5-2016 (RW-1/AJ), work order dated 31-3-2016 (RW-1/AK) and work order dated 31-3-2016 (RW-1/AL).

19. In cross-examination, on behalf of petitioner he denied that the petitioner worked as supervisor in their project. He denied that the petitioner was terminated in the year, 2010. He admitted that there was a compromise effected between the parties before the Deputy Commissioner, Kinnaur on 7-7-2010 that the services of the petitioner shall be reinstated. He admitted that the land of the petitioner was acquired for setting up of the project. He denied that the petitioner had filed complaint to them for not deducting the EPF. When cross-examined on behalf of respondent No. 3, he admitted that the petitioners were working with the respondent since 2010. He further admitted that as per the work orders the nature of work is computer operator.

20. Shri Arvind Negi, Advocate for respondent No. 5 *vide* his separate statement dated 23-3-2022 has stated that he does not want to lead any evidence *i.e.* oral and documentary on behalf of the respondent No.5.

21. This is the entire oral as well as documentary evidence led from the side of the parties.

22. Shri Vinod Sharma, Learned counsel for the petitioner has contended with all vehemence that the petitioner was engaged as chowkidar by respondent No. 1 on 01-08-2010 and his services were illegally terminated by the respondent No. 1 by an oral dismissal order in the year 2016. Along-with the petitioner as many as eleven other persons and two chowkidars were also terminated. The matter was reconciled and with the intervention of the Deputy Commissioner, Kinnaur, their services were re-engaged. He has also argued that the termination of the services of the petitioner is in violation of the salient provision of the Act as well as Articles 14, 16 and 21 of the Constitution of India.

23. *Per contra*, Shri Manoj Chauhan, Ld. Counsel for the respondent No. 1 argued that there exists no employee-employer relationship between petitioner and respondent No. 1. He further argued that the petitioner was never engaged by the respondent No. 1 and no appointment letter has been issued to him and even no identity card has been placed on record by him. The petitioner has also failed to place on record the statement of account showing the salary allegedly to be paid by respondent No. 1. No documentary proof showing the contribution towards EPF and ESI has been placed on record. The petitioner has alleged that he was engaged as computer chowkidar by the respondent No. 1, whereas the work order has been issued for data entry operator. The petitioner was the employee of the contractor, who deputed the petitioner with HPPCL. He prayed that the claim petition may kindly be dismissed.

24. Shri Arvind Negi, Ld. Counsel for the respondent No. 5, has contended that the petitioner neither pleaded nor proved on record that he was engaged by respondent No. 5. As a matter of fact, the petitioner was engaged by HPPCL. The petitioner has miserably failed to prove

that he was the employee of respondent No. 5. He also prayed for the dismissal of the claim petition.

25. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the petitioner, as well Learned Counsel for the respondents No. 1 to 5 and have also scrutinized the entire case record with minute care, caution and circumspection.

26. Admittedly, the petitioner by way of placing on record oral and documentary proof had tried to establish on record to prove that the petitioner has been engaged and working with the respondent No. 1 till the time of his termination. The respondent No. 1 *i.e.* Kashang Hydro Electric Project under HPPCL had engaged the services of the petitioner who worked there for ten years *i.e.* 2007 to 2016. However, the petitioner himself deposed that Kashang Hydroelectric Project had engaged his services, in the very opening line of his cross-examination. According to him he was engaged by HPPCL. The respondent No. 1 had issued the work orders inviting the job through contractors. However, the petitioner again twisted the fact by deposing that he was working with respondent No. 1 and engaged by him. He has also admitted that there were many contractors registered with HPPCL.

26. As a matter of fact, the present reference has been sent by the appropriate government qua the termination of the services of the petitioner by the respondents No. 1 to 4 w.e.f. 1-7-2016, without complying with the provisions of the Act, the petitioner having been engaged as a chowkidar by the principal employer i.e. Kashang Hydro Electric Project, HPPCL through the contractors on outsource basis (Respondents No. 2 to 4). Thus, it is abundantly clear on record that the matter in controversy has been narrowed down in a short compass that whether the respondent No. 1, being principal employer had followed the basic and cardinal principles envisaged under the Act while terminating the services of the petitioner or not? It has been specifically pleaded from the side of the respondent No. 1 that the petitioner had been engaged for a specific time period through the contractor to which the allocation of work order has been issued for providing the manpower service in the Project, being awarded for a specific period throughout the year. As a matter of fact, the work order for outsourcing various works including data entry is awarded in the beginning of any financial year considering the various service by flouting short term notice with the prior approval of the competent authority. The services of the petitioner were also outsourced through local contractors, who deployed the petitioner as per requirement, as such, the onus to deploying the manpower lies with the contractor/agency as per the terms and conditions of the contract. Initially, the petitioner was an employee of the contractor and was deployed with HPPCL on outsource basis. In fact, the petitioner has also admitted in his cross-examination that his services were not at all engaged by Kashang Hydro Electric Project or HPPCL. Though, he has tried to improve his version by stating that he was engaged and terminated by respondent No. 1 but it is merely an afterthought expression and cannot replace the earlier version as deposed by him in his cross-examination.

27. Verily, much stress has been placed on record from the side of the petitioner to the agreement (PW-2/A), executed between the parties *i.e.* the representatives of HPPCL, the representatives Pariyojna Prabhavit Sabha, Village Pangi (effected community) before the Deputy Commissioner, Kinnaur on 7-7-2010 wherein it has been amicably agreed by all the concerned parties that 14 workers terminated by M/s HPPCL shall be provided livelihood by HPPCL till they got employment through HPPCL or some other agency. Seven new recruitments from Pangi Village shall be done through M/s HCC Ltd., within 0-7 days from the date of call off strike subject to permission by the Hon'ble High Court. It is contended before me that the petitioner and eleven other workers were terminated by the respondent No. 1 and with the intervention of Deputy Commissioner, Kinnaur, their services were restored on 19-8-2010 and a compromise was effected. Though, the petitioner has miserably failed to establish on record that initially he was engaged by

respondent No. 1 *i.e.* HPPCL. Neither any appointment letter nor any termination letter has been placed on record. From the recital of the agreement dated 7-7-2010, executed before the Deputy Commissioner, Kinnaur. There was an agreement executed between the parties that the representatives of Project effected members shall be provided the livelihood by HPPCL. Such a recital shall not give any right to the petitioner that he was engaged/appointed by respondent No. 1. More so, the recital of agreement (PW-2/A) dated 7-7-2010, shall not come in any way to substantiate the plea raised from the side of the petitioner. The initial burden lies on the petitioner to prove that he was not engaged by the contractors but by HPPCL.

28. Now, the question which arises for determination before this Tribunal that what relevancy, authenticity and legality attached to the writing dated 7-7-2010 (PW-2/A). All the recital made thereto in such writing amounts to a stop gap arrangement whereby it was resolved by the representatives of all the parties concerned to reconcile the matter. However, providing of livelihood by the respondent No. 1 to the workers, who were terminated by outsourcing agency/contractor, shall providing or offering any appointment/engagement to the petitioner with the respondent No. 1. It is quite apparent on the face of the record that the petitioner was not engaged by the respondent No. 1 directly rather he was engaged on outsource basis through contractor.

29. The next question arise before me that whether the termination of the services of the petitioner *w.e.f.* 1-7-2016, is violative of the provisions of the Act. Amongst arraying both the contractors, as the contesting respondents, one of them while contesting the claim petition averred that the petitioner has neither been engaged by the replying respondent nor terminated his services. The petitioner was engaged by the respondent No.1. No legal or vested rights of the petitioner have been infringed by the respondent No. 3 in any manner. However, the petitioner as (PW-1) during cross-examination by respondent No. 3 admitted that he was working with respondent No. 1 and he was engaged by respondent No. 1. He was not engaged by respondent No. 3. Both the contractors are not known to him personally. He has not claimed any particular relief against contractors. All his service conditions were being maintained and supervised by respondent No.1. All the contentions raised at bar are devoid of merits. In my humble opinion, the petitioner miserably failed to lead any cogent, clear and clinching evidence to establish on record that he was engaged by respondent No. 1. In any case, the petitioner has also failed to produce on record any documentary proof regarding his engagement, oral termination, service conditions and over all supervision and control by respondent No.1. Mere oral deposition in the absence of any cogent documentary proof assumes no significance in the eyes of law. Furthermore, the averments made thereto in the reply filed by respondent No.1 are fully corroborated by the respondent No. 1 witness Shri Mahender Kumar General Manager, Civil, HPPCL (RW-1), wherein he has categorically stated that the entire dues to the petitioner is shown to have been paid by the respondent. The petitioner was never engaged by respondent No. 1 in any field of work/job at any point of time. The services of the petitioner were engaged on outsource basis through the contractor to whom the respondent No.1 has awarded the work orders from time to time. The petitioner was the employee of contractor and deployed with HPPCL, on outsource through contractors. Undoubtedly, there was an agreement executed before the Deputy Commissioner, Kinnaur on 7-7-2010 whereby the representatives of project effected members, representatives of HPCL and representatives of HCCL were signatory to the said writings. Simple, on the score that the officers of the HPPCL put their signatures to the said writing shall not provide any employment/engagement to the petitioner. The respondent witness categorically admitted that the petitioner filed complaint before the Deputy Commissioner, Kinnaur. The EPF of the petitioner was deducted by the contractor. He also admitted that the agreement bears the signatures of General Manager, Deputy General Manager of HPPCL respectively being representatives of HPPCL. However, he feigned ignorance that the petitioner was engaged as Chowkidar. He admitted that after the issuance of the work orders, the same has been accepted by the contractors. Admittedly, the respondent No.1 being principal employer had

engaged the services of the petitioner through the contractors though there is a denial on the part of the contractors. It is now fairly established that the services of the petitioner were engaged by the contractors and deployed with HPPCL. It is also admitted position on record that the contractors while terminating the services of the petitioner is to comply with the requirement of the law. The very action on the part of the respondents while terminating the services of the petitioner has to fall within the four corners of the definition of “retrenchment” as envisaged under section 2-oo (bb) of the Act, hence, the termination of the services of the petitioner is held to be bad and nonest in the eyes of law. Since, the petitioner has completed the requirement of days as fixed by the Government for Tribal area, hence, he is also entitled for the protection of section 25-F of the Act. It is also admitted fact that before retrenching the services of the petitioner neither any notice had been issued nor any compensation has been paid. Therefore, in view of the above discussion, I am satisfied that the workman was terminated illegally and unjustifiably without complying with section 25-F of the Act, which provides as under:

"No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until :

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government for such authority as may be specified by the appropriate Government by notification in the Official Gazette".

30. So, in view of this enabling provision of the act, no workman employed in any industry, who has been in “continuous service” for not less than one year, can be retrenched by the employer unless he has been given one month’s notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression “continuous service” has been defined under Section 25-B of the Act, which in its material part reads:

“25B. Definition of continuous service. For the purposes of this Chapter,—

- (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;*
- (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—*
 - (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—*
 - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and*

(ii) *two hundred and forty days, in any other case....*”

31. Since, the petitioner is proved to have completed more than 180 days (as applicable in Tribal area) during the period of twelve calendar months in the preceding year from the date of his retrenchment, his services could not have been terminated unless he was served with one month's mandatory notice and paid the retrenchment compensation, as envisaged under Section 25-F of the Act. Admittedly, the provisions of Section 25-F of the Act were not followed or complied with by the respondent in the latter and spirit. The respondent did not pay the retrenchment compensation to the petitioner, nor had issued any requisite notice to the petitioner.

32. In the back-drop of aforesaid events, it is held that the termination of the petitioner was in violation of the provisions of Sections 25-B and 25-F of the Act. The termination is held to be illegal, unlawful and unjustified.

33. Now, the question arises as to what relief, the workman is entitled to? Their Lordships of Hon'ble Supreme Court in an authority reported as The Workmen of **M/s Firestone Tyre & Rubber Co. of India (Pvt.) Ltd. etc. vs. The Management & Ors. 1973 (1) SCC 813**, Hon'ble Supreme Court observed as under:

"10. In a particular case, after setting aside the order of dismissal, whether a workman should be reinstated or paid compensation is, as held by this Court in The Management of Panitole Tea Estate Vs. The workmen (1971) 1 SCC 742 within the judicial decision of a Labour Court of Tribunal."

34. Similarly, Their Lordship of Hon'ble Delhi High Court in another authority reported as **Nehru Yuva Kendra Sangathan Vs. Union of India & Ors. 2000 IV AD (Delhi) 709**, Hon'ble **Delhi High Court** dealt with the question of reinstatement and back wages and observed as under:

"The decision of the Supreme Court rendered in the 1970s and 1980s that reinstatement with back wages was the norm in cases where the termination of the services of the workman was held inoperative. The decisions rendered in the 1990s, including the decision of the Constitution Bench in the Punjab Land Development and Reclamation Corporation Ltd., Chandigarh seem to suggest that compensation in lieu of reinstatement and back wages is now the norm. In any case, since I am bound to follow the decision of the Constitution Bench, I, therefore, conclude that reinstatement is not the inevitable consequence of quashing an order of termination; compensation can be awarded in lieu of reinstatement and back wages."

35. To combat with, I am persuaded to award compensation in lieu of reinstatement and back wages to the workman.

36. Similarly, Their Lordships of Hon'ble Supreme Court in another authority reported as **M.L. Binjolkar Vs. State of Madhya Pradesh, 2005 VI (S.C.) 413**, Hon'ble Supreme Court observed in paragraph 7 as under :

"Though the High Court has not specifically dealt with the question as to what would be the appropriate quantum, keeping in view the law laid down by this Court in various cases e.g. Hindustan Motors Ltd. Vs. Tapanj Kumar Bhattacharya & Anr. (2002 (6) SCC 41), Rajendra Prasad Arya Vs. State of Bihar (200 (9) SCC 514), Sonepat Cooperative Sugar Mills Ltd. Vs. Ajit Singh (2005 (3) SCC 232), Haryana State Cooperative Land Development Bank Vs. Neelam (2005 (5) SCC 91), Manager, Reserve Bank of India,

Bangalore *Vs.* S. Mani & Ors. (2005 (5) SCC 100) and Allahabad Jal Sansthan *Vs.* Daya Shankar Rai & Anr. (2005 (5) SCC 124), we do not find any scope for interference. The earlier view was that whenever there is interference with the order of termination or retirement, full back wages were the natural corollary. It has been laid down in the cases noted above that it would depend upon several factors and the court has to weigh the pros and cons of each case and to take a pragmatic view."

37. Their Lordship of Hon'ble Supreme Court in another authority reported as **U.P. State Brassware Corporation Limited and another Vs. Uday Narain Pandey, (2006) 1 SCC 479**, wherein the Hon'ble Supreme Court, observed as under:

"A Division Bench of this Court in **M.L. Binjolkar v. State of M.P. (2005) 6 SCC 224**, referring to a large number of decisions, held as under:

"The earlier view was that whenever there is interference with the order of termination or retirement, fullback wages were the natural corollary. It has been laid down in the cases noted above that it would depend upon several factors and the Court has to weigh the pros and cons of each case and to take a pragmatic view."

38. In the exposition of law enumerated hereinbefore, now, I would like to examine the merits of the case.

39. In the instant case, the petitioner was engaged by the respondent No. 1 through contractors. The petitioner had worked in the capacity of workman. Since, the services of the petitioner were not directly engaged by the respondent No. 1, hence, the only remedy available with this Tribunal is to award compensation amount to the petitioner in lump sum amount.

40. Recent developments, particularly the trends particularly much after the year 2007 shows that grant of compensation in lieu of reinstatement has gained precedence, more particularly, where the services of the workmen have been terminated because of procedural defects. In the case in hand too the termination is found to be illegal in view of the provisions Act, both ends of justice would thus be met, in case the petitioner is granted compensation in lieu of reinstatement thereof. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court titled as **Bharat Sanchar Nigam Ltd. Vs. Bhurumal (2014) 7 SCC 177** and further reiterated lately in **P. Karupaiah (dead) through Legal Representatives Vs. General Manager, Thruuvalluvar Transport Corporation Ltd. (2018) 12 SCC 663 and Rashtrasant Tukdoji Maharaj Technical Education Samnsta, Nagpur Vs. Prashant Manikrao Kubitkar (2018) 12 SCC 294**.

41. For the foregoing reasons and keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above, the petitioner is held entitled for a lump sum compensation amount of ₹ 70,000/- (₹ Seventy Thousand only) as lump sum compensation from the respondents who are jointly and severally liable to pay the awarded amount to the petitioner. All these issues are decided accordingly.

Relief :

42. As a sequel to my above discussion and findings on issues No. 1 to 3, the claim of the petitioner succeeds and is hereby allowed and the petitioner is awarded lump sum compensation of ₹ 70,000/- (Rupees Seventy Thousand only) to the workman, to be paid by the respondent No.1 within two months from the date of announcement of the award, failing which interest at the rate of 9% (nine percent) would be payable by the respondents to the workman. It is expressly made clear that apart from lump sum compensation, **the petitioner is entitled for all his legal dues**

i.e. gratuity, leave encashment, EPF, ESI etc., admissible if any, in accordance with law. The reference is disposed off in the aforesaid terms. Let a copy of this award be communicated to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 1st day of June, 2022.

Sd/-
(RAJESH TOMER),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

**IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 07 of 2018

Instituted on : 01-03-2018

Decided on : 01-06-2022

Des Raj s/o Shri Gyanpat, r/o Village and Post Office Pangti, Tehsil Kalpa, District
Kinnaur, H.P. . *Petitioner.*

VERSUS

1. The General Manager, Kashang Hydro Electric Project, HPPCL, Knifed Building,
IKHP, Reckong Peo, District Kinnaur, H.P.

2. Vijay Kumar Negi, Government Contractor, VPO Pangti, Tehsil Kalpa, District
Kinnaur, H.P.

3. Karma Lama, Government Contractor, VPO Pangti, Tehsil Kalpa, District Kinnaur,
H.P.

4. Hirpal Singh, Government Contractor, VPO Pangti, Tehsil Kalpa, District Kinnaur,
H.P.

5. Sanjeev Kumar, Government Contractor, VPO Pangti, Tehsil Kalpa, District Kinnaur
HP.

6. Bharat Lal, Contractor, VPO Pangti, Tehsil Kalpa, District Kinnaur, H.P.
. *Respondents.*

Reference petition under section 10 of the Industrial Disputes Act

For the petitioner : Shri Vinod Sharma, Adv.

For the Respondent No. 1 : Shri Manoj Chauhan, Adv.
 For the Respondents No. 2 to 5 : Ex-parte
 For the Respondent No. 6 : Shri Arvind Negi, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government, *vide* notification dated 12-6-2018, under section 10 of the Industrial Disputes Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, as under:

“Whether termination of services of Shri Desh Raj s/o Shri Gyanpat, r/o Village and Post Office Pangi, Tehsil Kalpa, District Kinnaur, H.P. by (i) Shri Vijay Kumar Negi, Government Contractor, VPO Pangi, Tehsil Kalpa, District Kinnaur, H.P. (ii) Shri Karam Lama, Government Contractor, VPO Pangi, Tehsil Kalpa, District Kinnaur, H.P., (iii) Shri Hirpal Singh, Government Contractor, VPO Pangi, Tehsil Kalpa, District Kinnaur, H.P. (iv) Shri Sanjeev Kumar Negi, Government Contractor, VPO Pangi, Tehsil Kalpa, District Kinnaur (v) Bharat Lal, Contractor, VPO Pangi, Tehsil Kalpa, District Kinnaur, H.P. (vi) The General Manager, Kashang Hydro Electric Project, HPPCL, Knifed Building, IKHP, Reckong Peo, District Kinnaur, H.P. (Principal Employer) *w.e.f.* 1-7-2016 without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. To the fore, Shri Desh Raj (hereinafter to be referred as the petitioner) has instituted the claim petition against the General Manager, Kashang Hydro Electric Project, HPPCL (**hereinafter to be referred as respondent No. 1**), Shri Vijay Kumar, Contractor (**hereinafter to be referred as the respondent No. 2**), Shri Karam Lama, Contractor (hereinafter to be referred as respondent No. 3), Shri Hirpal Singh, Contractor (hereinafter to be referred as respondent No. 4), Shri Sanjeev Kumar Negi, Contractor (hereinafter to be referred as respondent No. 5) and Shri Bharat Lal, Contractor (**hereinafter to be referred as the respondent No. 6**) under the provisions of the Act.

3. Key facts necessary for the disposal of the present reference petition are thus that the petitioner was engaged as chowkidar for ten years *w.e.f.* 01-08-2007 and worked as such till 29-6-2016. On 30-6-2016, the respondent company has illegally and without any notice has terminated the services of the petitioner. The oral termination of the services of the petitioner lead him to approach the respondents for his re-engagement into services but to no avail. Along-with the petitioner the services of eleven persons have also been terminated. Earlier also on 19-8-2010, the services of the petitioner and eleven others workers were terminated and with the intervention of the Deputy Commissioner, Kinnaur their services were retained on 19-8-2010.

4. It is further averred that the respondents by colorable exercise of powers have terminated the services of the petitioner in gross violation of the provisions of sections 25-F, 25-G and 25-H of the Act. The respondent No. 1 being model employer cannot be expected to act in the manner and fashion in which they have dealt with the case of the petitioner. Due to the acts of omission and commission on the part of the respondents, the right to livelihood of the petitioner has been taken away, which is highly illegal and bad in the eyes of law. The right of life under Article 21 of the Constitution of India is being snatched by the respondent by resorting to illegal means. The petitioner has raised demand notice and served the same upon the respondent.

5. The following prayer clause has been appended, in the footnote of the petition, which reads as under:

“In view of the aforementioned submissions, it is most respectfully prayed that present petition may kindly be allowed with the following relief(s):

- (i) The respondent company may kindly be directed to re-engage the petitioner in service as Chowkidar at the same place where he was working prior to his oral illegal termination.
- (ii) The respondent may kindly be directed to grant all consequential benefits to the petitioner such as seniority, arrears of back-wages etc.”

6. The lis was resisted and contested by respondent No. 1 by filing written reply wherein preliminary objections of maintainability and the petitioner is contract employee engaged by the respondent company have been raised.

7. On merits, it is submitted that the services of the petitioner were engaged for specific time period through contractors to whom work order for providing manpower service in the project was awarded for a specific period throughout the year. The work order was awarded for outsourcing various job/works including data entry/attending/serving in the field and office. The onus to engage the workers lies on the contractors. The answering respondent has nothing to do with the employment of the petitioner. The petitioner was the employee of contractor and deployed with HPPCL on outsource basis through contractor. The requirement of data entry/attending/security services from the local contractor had shrunk in the year 2016 due to completion of construction work of Kashang Hydro Electric Project Stage-1. The services of the petitioner along-with other eleven workers were not terminated by the respondent company, however, their services were hired by M/s HPPCL on contract basis. It is therefore prayed that in view of the submission made hereinabove, the claim petition of the petitioner may kindly be dismissed in the interest of law and justice and justice be done.

8. The respondents No. 2 to 5 *i.e.* Vijay Kumar Negi, Government Contractor, VPO Pangti, Tehsil Kalpa, District Kinnaur, H.P., Karma Lama, Contractor, VPO Pangti, Tehsil Kalpa, District Kinnaur, H.P., Hirpal Singh, Contractor, VPO Pangti, Tehsil Kalpa, District Kinnaur, H.P. **and Sanjeev Kumar, Contractor VPO Pangti, Tehsil Kalpa District Kinnaur, H.P.** have been duly served in accordance with law but they have failed to appear before this Court, hence, *vide* order dated 24-9-2018 and 7-5-2019, they were proceeded against ex-parte.

9. By filing separate reply, respondent No. 6 resisted and contested the claim of the petitioner wherein preliminary objections regarding concealment of material facts, no legal and vested right of the petitioner has been infringed or violated, the petitioner has never been engaged by respondent No. 5 and maintainability have been raised. On merits it is contended that the petitioner has never been engaged by the replying respondent and there is no question of illegal termination/dismissal from service *w.e.f.* 30-6-2016. It is therefore prayed that the claim petition may kindly be dismissed.

10. While filing rejoinder, the petitioner controverted the averments made thereto in the replies filed by respondent no.1 and reaffirmed and reiterated those in the petition.

11. On elucidating the pleading of parties, the following issues were struck down for its final determination *vide* Court order dated 30-05-2019 :—

1. Whether the termination of the petitioner is violative of the provisions of section 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 as alleged. If so, to what relief the petitioner is entitled to? . . . *OPP*.
2. Whether the reference is not maintainable as alleged. If so its effects thereto? . . . *OPR*.
3. Whether the services of the petitioner was hired through a contractor and he was not the employee of respondent No. 1 as alleged. If so its effect thereto? . . . *OPR*.
4. Relief

12. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

13. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

14. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue No. 1	Yes. Entitled to lump sum compensation of ₹ 70,000/-. (₹ Seventy Thousand only).
Issue No. 2	No
Issue No. 3	Yes
Relief	Reference is answered in affirmative, as per operative part of award.

REASONS FOR FINDINGS

Issues No.1 to 3 :

15. All these issues are intermingled and inter connected, as mutually existed and required the common appreciation of evidence, being taken up together for the purpose of their determination and adjudication.

16. To substantiate his case, the petitioner namely Shri Desh Raj appeared into the witness dock as (PW-1) to depose that he was engaged as chowkidar on 1-8-2010 in project run by respondent No. 1 at Reckong Peo. He continued as such till 30-8-2016 and his services were dispensed with after 30-6-2016 orally without issuing any notice. He approached the respondent for his re-engagement but they refused to give him any work. After his illegal termination, six persons had been engaged by the respondent as attendants. The respondent had also engaged electricians and other tradesmen. Earlier in 2010, the respondent had terminated their services and they had been re-engaged after the respondents entered into an agreement with the representatives of the village in the presence of the Deputy Commissioner vide Mark P-1. Their land also been acquired for the project and as such he fall under the category of beneficiaries and the respondent had illegally terminated his services. He prayed that he be re-engaged with all consequential benefits including back-wages. He has placed on record the detail of the outsourced manpower as received under RTI Act, Mark A-2 and the application made by the 14 terminated workers in the year 2010 Mark A-3.

17. In cross-examination, on behalf of respondent No.1, he admitted that initially he was not engaged with the respondent No. 1. He further admitted that he was not issued any appointment letter by respondent No. 1 nor any I card was issued by them. He denied that he was never working with the HPPCL and he had been engaged through a contractor. He admitted that his name is not reflected in (PW-2/A). He admitted that he have no documents to show that his attendance was marked with the HPPCL. He denied that he was an employee of respondent No. 3. He also admitted that he has not placed on record anything to show that he was a beneficiary. When cross-examined on behalf of respondent No. 6, he admitted that he was working with respondent No. 1 and he was engaged by respondent No. 1. He further admitted that the respondent No. 6 had never engaged him. He also admitted that his services were terminated by respondent No. 1. He admitted that his salary was paid by respondent No.1.

18. In order to rebut, the respondent No.1 examined one Shri Mahender Kumar, General Manager, Civil as (RW-1), who tendered in evidence his affidavit (RW-1/A) wherein he reiterated almost all the averments as made in the reply. He also tendered into evidence letter dated 31-3-2008 (RW-1/B), tender dated 31-3-2008 (RW-1/C), letter dated 7-11-2008 (RW-1/D), work order dated 1-1-2008 (RW-1/E), conditions (RW-1/F), work order dated 27-12-2008 (RW-1/G), conditions (RW-1/H), letter dated 2-3-2009 (RW-1/J), work order dated 2-3-2009 (RW-1/K), conditions (RW-1/L), work order dated 31-3-2009 (RW-1/M), conditions (RW-1/N), letter dated 1-12-2009 (RW-1/O), check list (RW-1/P), work order dated 1-12-2009 (RW-1/Q), conditions (RW-1/R), letter dated 30-9-2011 (RW-1/S), work order dated 30-9-2011 (RW-1/T), conditions (RW-1/U), letter dated 27-5-2014 (RW-1/V), work order dated 19-9-2011 (RW-1/W), letter dated 13-3-2011 (RW-1/X), letter dated 20-9-2012 (RW-1/Y), work order dated 20-9-2012 (RW-1/Z), letter dated 31-12-2012 (RW-1/AA), work order dated 31-12-2012 (RW-1/AB), letter dated 22-9-2014 (RW-1/AC), letter dated 30-3-2015 (RW-1/AD), work order dated 30-3-2015 (RW-1/AE), letter dated 31-3-2016 (RW-1/AF), work order dated 31-3-2016 (RW-1/AG), letter dated 11-5-2016 (RW-1/AH), work order dated 11-5-2016 (RW-1/AJ), work order dated 31-3-2016 (RW-1/AK) and work order dated 31-3-2016 (RW-1/AL).

19. In cross-examination, on behalf of petitioner he denied that the petitioner worked as supervisor in their project. He denied that the petitioner was terminated in the year, 2010. He admitted that there was a compromise effected between the parties before the Deputy Commissioner, Kinnaur on 7-7-2010 that the services of the petitioner shall be reinstated. He admitted that the land of the petitioner was acquired for setting up of the project. He denied that the petitioner had filed complaint to them for not deducting the EPF. When cross-examined on behalf of respondent No. 3, he admitted that the petitioners were working with the respondent since 2010. He further admitted that as per the work orders the nature of work is computer operator.

20. Shri Arvind Negi, Advocate for respondent No. 5 *vide* his separate statement dated 23-3-2022 has stated that he does not want to lead any evidence *i.e.* oral and documentary on behalf of the respondent No.5.

21. This is the entire oral as well as documentary evidence led from the side of the parties.

22. Shri Vinod Sharma, Learned counsel for the petitioner has contended with all vehemence that the petitioner was engaged as chowkidar by respondent No. 1 on 01-08-2010 and his services were illegally terminated by the respondent No. 1 by an oral dismissal order in the year 2016. Along-with the petitioner as many as eleven other persons and two chowkidars were also terminated. The matter was reconciled and with the intervention of the Deputy Commissioner, Kinnaur, their services were re-engaged. He has also argued that the termination of the services of the petitioner is in violation of the salient provision of the Act as well as Articles 14, 16 and 21 of the Constitution of India.

23. *Per contra*, Shri Manoj Chauhan, Ld. Counsel for the respondent No. 1 argued that there exists no employee-employer relationship between petitioner and respondent No. 1. He further argued that the petitioner was never engaged by the respondent No. 1 and no appointment letter has been issued to him and even no identity card has been placed on record by him. The petitioner has also failed to place on record the statement of account showing the salary allegedly to be paid by respondent No. 1. No documentary proof showing the contribution towards EPF and ESI has been placed on record. The petitioner has alleged that he was engaged as computer chowkidar by the respondent No. 1, whereas the work order has been issued for data entry operator. The petitioner was the employee of the contractor, who deputed the petitioner with HPPCL. He prayed that the claim petition may kindly be dismissed.

24. Shri Arvind Negi, Ld. Counsel for the respondent No. 5, has contended that the petitioner neither pleaded nor proved on record that he was engaged by respondent No. 6. As a matter of fact, the petitioner was engaged by HPPCL. The petitioner has miserably failed to prove that he was the employee of respondent No. 5. He also prayed for the dismissal of the claim petition.

25. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the petitioner, as well Learned Counsel for the respondents No. 1 to 5 and have also scrutinized the entire case record with minute care, caution and circumspection.

26. Admittedly, the petitioner by way of placing on record oral and documentary proof had tried to establish on record to prove that the petitioner has been engaged and working with the respondent No. 1 till the time of his termination. The respondent No.1 *i.e.* Kashang Hydro Electric Project under HPPCL had engaged the services of the petitioner who worked there for ten years *i.e.* 2007 to 2016. However, the petitioner himself deposed that Kashang Hydroelectric Project had engaged his services, in the very opening line of his cross-examination. According to him he was engaged by HPPCL. The respondent no.1 had issued the work orders inviting the job through contractors. However, the petitioner again twisted the fact by deposing that he was working with respondent No.1 and engaged by him. He has also admitted that there were many contractors registered with HPPCL.

26. As a matter of fact, the present reference has been sent by the appropriate government qua the termination of the services of the petitioner by the respondents No. 1 to 4 w.e.f. 1-7-2016, without complying with the provisions of the Act, the petitioner having been engaged as a chowkidar by the principal employer i.e Kashang Hydro Electric Project, HPPCL through the contractors on outsource basis (Respondents No. 2 to 4). Thus, it is abundantly clear on record that the matter in controversy has been narrowed down in a short compass that whether the respondent No.1, being principal employer had followed the basic and cardinal principles envisaged under the Act while terminating the services of the petitioner or not? It has been specifically pleaded from the side of the respondent No. 1 that the petitioner had been engaged for a specific time period through the contractor to which the allocation of work order has been issued for providing the manpower service in the Project, being awarded for a specific period throughout the year. As a matter of fact, the work order for outsourcing various works including data entry is awarded in the beginning of any financial year considering the various service by flouting short term notice with the prior approval of the competent authority. The services of the petitioner were also outsourced through local contractors, who deployed the petitioner as per requirement, as such, the onus to deploying the manpower lies with the contractor/agency as per the terms and conditions of the contract. Initially, the petitioner was an employee of the contractor and was deployed with HPPCL on outsource basis. In fact, the petitioner has also admitted in his cross-examination that his services were not at all engaged by Kashang Hydro Electric Project or HPPCL. Though, he has tried to improve his version by stating that he was engaged and terminated by respondent No. 1 but it is

merely an afterthought expression and cannot replace the earlier version as deposed by him in his cross-examination.

27. Verily, much stress has been placed on record from the side of the petitioner to the agreement (PW-2/A), executed between the parties *i.e.* the representatives of HPPCL, the representatives Pariyojna Prabhavit Sabha, Village Pangi (effected community) before the Deputy Commissioner, Kinnaur on 7-7-2010 wherein it has been amicably agreed by all the concerned parties that 14 workers terminated by M/s HPPCL shall be provided livelihood by HPPCL till they got employment through HPPCL or some other agency. Seven new recruitments from Pangi Village shall be done through M/s HCC Ltd., within 0-7 days from the date of call off strike subject to permission by the Hon'ble High Court. It is contended before me that the petitioner and eleven other workers were terminated by the respondent No. 1 and with the intervention of Deputy Commissioner, Kinnaur, their services were restored on 19-8-2010 and a compromise was effected. Though, the petitioner has miserably failed to establish on record that initially he was engaged by respondent No.1 *i.e.* HPPCL. Neither any appointment letter nor any termination letter has been placed on record. From the recital of the agreement dated 7-7-2010, executed before the Deputy Commissioner, Kinnaur. There was an agreement executed between the parties that the representatives of Project effected members shall be provided the livelihood by HPPCL. Such a recital shall not give any right to the petitioner that he was engaged/appointed by respondent No. 1. More so, the recital of agreement (PW-2/A) dated 7.7.2010, shall not come in any way to substantiate the plea raised from the side of the petitioner. The initial burden lies on the petitioner to prove that he was not engaged by the contractors but by HPPCL.

28. Now, the question which arises for determination before this Tribunal that what relevancy, authenticity and legality attached to the writing dated 7-7-2010 (PW-2/A). All the recital made thereto in such writing amounts to a stop gap arrangement whereby it was resolved by the representatives of all the parties concerned to reconcile the matter. However, providing of livelihood by the respondent No. 1 to the workers, who were terminated by outsourcing agency/contractor, shall providing or offering any appointment/engagement to the petitioner with the respondent No. 1. It is quite apparent on the face of the record that the petitioner was not engaged by the respondent No. 1 directly rather he was engaged on outsource basis through contractor.

29. The next question arise before me that whether the termination of the services of the petitioner *w.e.f.* 1-7-2016, is violative of the provisions of the Act. Amongst arraying both the contractors, as the contesting respondents, one of them while contesting the claim petition averred that the petitioner has neither been engaged by the replying respondent nor terminated his services. The petitioner was engaged by the respondent No. 1. No legal or vested rights of the petitioner have been infringed by the respondent No. 3 in any manner. However, the petitioner as (PW-1) during cross-examination by respondent No. 3 admitted that he was working with respondent No. 1 and he was engaged by respondent No. 1. He was not engaged by respondent No. 3. Both the contractors are not known to him personally. He has not claimed any particular relief against contractors. All his service conditions were being maintained and supervised by respondent No. 1. All the contentions raised at bar are devoid of merits. In my humble opinion, the petitioner miserably failed to lead any cogent, clear and clinching evidence to establish on record that he was engaged by respondent No. 1. In any case, the petitioner has also failed to produce on record any documentary proof regarding his engagement, oral termination, service conditions and over all supervision and control by respondent No. 1. Mere oral deposition in the absence of any cogent documentary proof assumes no significance in the eyes of law. Furthermore, the averments made thereto in the reply filed by respondent No. 1 are fully corroborated by the respondent No. 1 witness Shri Mahender Kumar General Manager, Civil, HPPCL (RW-1), wherein he has categorically stated that the entire dues to the petitioner is shown to have been paid by the respondent. The petitioner was never

engaged by respondent No. 1 in any field of work/job at any point of time. The services of the petitioner were engaged on outsource basis through the contractor to whom the respondent No. 1 has awarded the work orders from time to time. The petitioner was the employee of contractor and deployed with HPPCL, on outsource through contractors. Undoubtedly, there was an agreement executed before the Deputy Commissioner, Kinnaur on 7-7-2010 whereby the representatives of project effected members, representatives of HPCL and representatives of HCCL were signatory to the said writings. Simple, on the score that the officers of the HPPCL put their signatures to the said writing shall not provide any employment/engagement to the petitioner. The respondent witness categorically admitted that the petitioner filed complaint before the Deputy Commissioner, Kinnaur. The EPF of the petitioner was deducted by the contractor. He also admitted that the agreement bears the signatures of General Manager, Deputy General Manager of HPPCL respectively being representatives of HPPCL. However, he feigned ignorance that the petitioner was engaged as Chowkidar. He admitted that after the issuance of the work orders, the same has been accepted by the contractors. Admittedly, the respondent No. 1 being principal employer had engaged the services of the petitioner through the contractors though there is a denial on the part of the contractors. It is now fairly established that the services of the petitioner were engaged by the contractors and deployed with HPPCL. It is also admitted position on record that the contractors while terminating the services of the petitioner is to comply with the requirement of the law. The very action on the part of the respondents while terminating the services of the petitioner has to fall within the four corners of the definition of “retrenchment” as envisaged under section 2-oo (bb) of the Act, hence, the termination of the services of the petitioner is held to be bad and nonest in the eyes of law. Since, the petitioner has completed the requirement of days as fixed by the Government for Tribal area, hence, he is also entitled for the protection of section 25-F of the Act. It is also admitted fact that before retrenching the services of the petitioner neither any notice had been issued nor any compensation has been paid. Therefore, in view of the above discussion, I am satisfied that the workman was terminated illegally and unjustifiably without complying with section 25-F of the Act, which provides as under:

"No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until :

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government for such authority as may be specified by the appropriate Government by notification in the Official Gazette".

30. So, in view of this enabling provision of the act, no workman employed in any industry, who has been in “continuous service” for not less than one year, can be retrenched by the employer unless he has been given one month’s notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression “continuous service” has been defined under Section 25-B of the Act, which in its material part reads:

“25B. Definition of continuous service. For the purposes of this Chapter,—

- (1) *a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;*
- (2) *where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—*
 - (a) *for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—*
 - (i) *one hundred and ninety days in the case of a workman employed below ground in a mine; and*
 - (ii) *two hundred and forty days, in any other case....”*

31. Since, the petitioner is proved to have completed more than 180 days (as applicable in Tribal area) during the period of twelve calendar months in the preceding year from the date of his retrenchment, his services could not have been terminated unless he was served with one month's mandatory notice and paid the retrenchment compensation, as envisaged under Section 25-F of the Act. Admittedly, the provisions of Section 25-F of the Act were not followed or complied with by the respondent in the latter and spirit. The respondent did not pay the retrenchment compensation to the petitioner, nor had issued any requisite notice to the petitioner.

32. In the back-drop of aforesaid events, it is held that the termination of the petitioner was in violation of the provisions of Sections 25-B and 25-F of the Act. The termination is held to be illegal, unlawful and unjustified.

33. Now, the question arises as to what relief, the workman is entitled to? Their Lordships of Hon'ble Supreme Court in an authority reported as The Workmen of **M/s Firestone Tyre & Rubber Co. of India (Pvt.) Ltd. etc. vs. The Management & Ors. 1973 (1) SCC 813**, Hon'ble Supreme Court observed as under:

"10. In a particular case, after setting aside the order of dismissal, whether a workman should be reinstated or paid compensation is, as held by this Court in The Management of Panitole Tea Estate Vs. The workmen (1971) 1 SCC 742 within the judicial decision of a Labour Court of Tribunal."

34. Similarly, Their Lordship of Hon'ble Delhi High Court in another authority reported as **Nehru Yuva Kendra Sangathan Vs. Union of India & Ors. 2000 IV AD (Delhi) 709, Hon'ble Delhi High Court** dealt with the question of reinstatement and back wages and observed as under:

"The decision of the Supreme Court rendered in the 1970s and 1980s that reinstatement with back wages was the norm in cases where the termination of the services of the workman was held inoperative. The decisions rendered in the 1990s, including the decision of the Constitution Bench in the Punjab Land Development and Reclamation Corporation Ltd., Chandigarh seem to suggest that compensation in lieu of reinstatement and back wages is now the norm. In any case, since I am bound to follow the decision of the

Constitution Bench, I, therefore, conclude that reinstatement is not the inevitable consequence of quashing an order of termination; compensation can be awarded in lieu of reinstatement and back wages."

35. To combat with, I am persuaded to award compensation in lieu of reinstatement and back wages to the workman.

36. Similarly, Their Lordships of Hon'ble Supreme Court in another authority reported as **M.L. Binjolkar Vs. State of Madhya Pradesh, 2005 VI (S.C.) 413**, Hon'ble Supreme Court observed in paragraph 7 as under :

"Though the High Court has not specifically dealt with the question as to what would be the appropriate quantum, keeping in view the law laid down by this Court in various cases e.g. Hindustan Motors Ltd. Vs. Tapanj Kumar Bhattarcharya & Anr. (2002 (6) SCC 41), Rajendra Prasad Arya Vs. State of Bihar (200 (9) SCC 514), Sonapat Cooperative Sugar Mills Ltd. Vs. Ajit Singh (2005 (3) SCC 232), Haryana State Cooperative Land Development Bank Vs. Neelam (2005 (5) SCC 91), Manager, Reserve Bank of India, Bangalore Vs. S. Mani & Ors. (2005 (5) SCC 100) and Allahabad Jal Sansthan Vs. Daya Shankar Rai & Anr. (2005 (5) SCC 124), we do not find any scope for interference. The earlier view was that whenever there is interference with the order of termination or retirement, full back wages were the natural corollary. It has been laid down in the cases noted above that it would depend upon several factors and the court has to weigh the pros and cons of each case and to take a pragmatic view."

37. Their Lordship of Hon'ble Supreme Court in another authority reported as **U.P. State Brassware Corporation Limited and another Vs. Uday Narain Pandey, (2006) 1 SCC 479**, wherein the Hon'ble Supreme Court, observed as under:

"A Division Bench of this Court in **M.L. Binjolkar v. State of M.P. (2005) 6 SCC 224**, referring to a large number of decisions, held as under:

"The earlier view was that whenever there is interference with the order of termination or retirement, fullback wages were the natural corollary. It has been laid down in the cases noted above that it would depend upon several factors and the Court has to weigh the pros and cons of each case and to take a pragmatic view."

38. In the exposition of law enumerated hereinbefore, now, I would like to examine the merits of the case.

39. In the instant case, the petitioner was engaged by the respondent No. 1 through contractors. The petitioner had worked in the capacity of workman. Since, the services of the petitioner were not directly engaged by the respondent No. 1, hence, the only remedy available with this Tribunal is to award compensation amount to the petitioner in lump sum amount.

40. Recent developments, particularly the trends particularly much after the year 2007 shows that grant of compensation in lieu of reinstatement has gained precedence, more particularly, where the services of the workmen have been terminated because of procedural defects. In the case in hand too the termination is found to be illegal in view of the provisions Act, both ends of justice would thus be met, in case the petitioner is granted compensation in lieu of reinstatement thereof. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court titled as **Bharat Sanchar Nigam Ltd. Vs. Bhurumal (2014) 7 SCC 177** and further reiterated lately in **P. Karupaiah (dead) through Legal Representatives Vs. General Manager, Thruuvalluvar**

Transport Corporation Ltd. (2018) 12 SCC 663 and Rashtrasant Tukdoji Maharaj Technical Education Samnatha, Nagpur Vs. Prashant Manikrao Kubitkar (2018) 12 SCC 294.

41. For the foregoing reasons and keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above, the petitioner is held entitled for a lump sum compensation amount of ₹ 70,000/- (₹ Seventy Thousand only) as lump sum compensation from the respondents who are jointly and severally liable to pay the awarded amount to the petitioner. All these issues are decided accordingly.

Relief

42. As a sequel to my above discussion and findings on issues No. 1 to 3, the claim of the petitioner succeeds and is hereby allowed and the petitioner is awarded lump sum compensation of **₹ 70,000/- (Rupees Seventy Thousand only) to the workman, to be paid by the respondents within two months from the date of announcement** of the award, failing which interest at the rate of 9% (nine percent) would be payable by the respondents to the workman. It is expressly made clear that apart from lump sum compensation, **the petitioner is entitled for all his legal dues i.e gratuity, leave encashment, EPF, ESI etc.**, admissible if any, in accordance with law. The reference is disposed off in the aforesaid terms. Let a copy of this award be communicated to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 1st day of June, 2022.

Sd/-
(RAJESH TOMER),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Reference Number : 63 of 2018

Instituted on : 02-04-2018

Decided on : 01-06-2022

Shiksha Devi d/o Shri Puran Chand, r/o Village Tyawal, P.O Jeori, Tehsil Rampur, District Shimla, H.P. . *Petitioner.*

VERSUS

1. The General Manager, Kashang Hydro Electric Project, HPPCL, Knifed Building, IKHP, Reckong Peo, District Kinnaur, H.P.

2. Bhagwan Dass Dogra, Contractor, VPO Ghanvi, Tehsil Rampur, District Shimla, H.P.

3. Man Bahadur, Contractor, VPO Telangi Mode, Reckongpeo, District Kinnaur, H.P.

4. Hirpal Singh Negi, Contractor VPO Pangi Tehsil Kalpa, District Kinnaur, H.P.
5. Roshan Kumar, Contractor VPO Pangi, Tehsil Kalpa, District Kinnaur, H.P.
6. Amit Kumar, Contractor VPO Pangi, Tehsil Kalpa, District Kinnaur, H.P.
7. Kanwar Singh, Contracto VPO Pangi, Tehsil Kalpa District Kinnaur, H.P.

. Respondents.

Reference petition under section 10 of the Industrial Disputes Act

For the petitioner : Shri Vikas Mishra, Adv.

For the Respondent No. 1 : Shri Manoj Chauhan, Adv.

For the Respondents No. 3 to 7 : Ex-parte.

For the Respondent No. 2 : Shri Arvind Negi, Adv.

AWARD

The following reference petition has been, received from the Appropriate Government, *vide* notification dated 1-1-2018, under section 10 of the Industrial Disputes Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, as under:

“Whether termination of services of Ms. Shiksha Devi d/o Shri Puran Chand, r/o Village Tyawal, P.O Jeori, Tehsil Rampur, District Shimla, H.P. by The General Manager, Kashang Hydro Electric Project, HPPCL, Knifed Building, IKHP, Reckong Peo, District Kinnaur, H.P. *w.e.f.* 1-7-2016, who was working as computer operator on outsource basis through (i) Shri Bhagwan Dass Dogra, Contractor, VPO Ghanvi, Tehsil Rampur, District Shimla H.P. (ii) Shri Man Bahadur, Contractor, Telangi Mode, Reckong peo, District Kinnaur, H.P. (iii) Shri Hirpal Singh Negi, Contractor VPO Pangi, Tehsil Kalpa, District Kinnaur, H.P. (iv) Shri Roshan Kumar, Contractor, VPO Pangi, Tehsil Kalpa, District Kinnaur, H.P. (v) Amit Kumar Contractor, VPO Pangi, Tehsil Kalpa, District Kinnaur, H.P. and (vi) Shri Kanwar Singh Contractor, VPO Pangi, Tehsil Kalpa, District Kinnaur, H.P. without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. To the fore, Ms. Shiksha Devi (hereinafter to be referred as the petitioner) has instituted the claim petition against the General Manager, Kashang Hydro Electric Project, HPPCL (**hereinafter to be referred as respondent No. 1**), Shri Bhagwan Dass Dogra, Contractor (**hereinafter to be referred as the respondent No. 2**), Shri Man Bahadur, Contractor (hereinafter to be referred as respondent No. 3), Shri Hirpal Singh, Contractor (hereinafter to be referred as respondent No. 4), Shri Roshan Kumar, Contractor (hereinafter to be referred as respondent No. 5), Shri Amit Kumar, Contractor (hereinafter to be referred as respondent No. 6) and Shri Kanwar Singh, Contractor (hereinafter to be referred as respondent No. 7) under the provisions of the Act.

3. Key facts necessary for the disposal of the present reference petition are thus that the petitioner was engaged as computer operator in June 2008 and subsequently her designation was changed in the year 2010-2011 and she was appointed as data operator and worked as such till 6-7-2016. On 7-7-2016 the respondent company has illegally and without any notice has terminated

the services of the petitioner. The oral termination of the services of the petitioner lead her to approach the respondents for her re-engagement into services but to no avail. Along-with the petitioner the services of eleven persons have also been terminated. Earlier also on 19-8-2010, the services of the petitioner and eleven others workers were terminated and with the intervention of the Deputy Commissioner, Kinnaur their services were retained on 19-8-2010.

4. It is further averred that the respondents by colorable exercise of powers have terminated the services of the petitioner in gross violation of the provisions of sections 25-F, 25-G and 25-H of the Act. The respondent No. 1 being model employer cannot be expected to act in the manner and fashion in which they have dealt with the case of the petitioner. Due to the acts of omission and commission on the part of the respondents, the right to livelihood of the petitioner has been taken away, which is highly illegal and bad in the eyes of law. The right of life under Article 21 of the Constitution of India is being snatched by the respondent by resorting to illegal means. The petitioner has raised demand notice and served the same upon the respondent.

5. The following prayer clause has been appended, in the footnote of the petition, which reads as under:

“In view of the aforementioned submissions, it is most respectfully prayed that present petition may kindly be allowed with the following relief(s):

- (i) The respondent company may kindly be directed to re-engage the petitioner in service as Data Operator at the same place where she was working prior to her oral illegal termination.
- (ii) The respondent may kindly be directed to grant all consequential benefits to the petitioner such as seniority, arrears of back-wages etc.”

6. The lis was resisted and contested by respondent No.1 by filing written reply wherein preliminary objections of maintainability and the petitioner is contract employee engaged by the respondent company have been raised.

7. On merits, it is submitted that the services of the petitioner were engaged for specific time period through contractors to whom work order for providing manpower service in the project was awarded for a specific period throughout the year. The work order was awarded for outsourcing various job/works including data entry/attending/serving in the field and office. The onus to engage the workers lies on the contractors. The answering respondent has nothing to do with the employment of the petitioner. The petitioner was the employee of contractor and deployed with HPPCL on outsource basis through contractor. The requirement of data entry/attending/security services from the local contractor had shrunk in the year 2016 due to completion of construction work of Kashang Hydro Electric Project Stage-1. The services of the petitioner along-with other eleven workers were not terminated by the respondent company, however, their services were hired by M/s HPPCL on contract basis. It is therefore prayed that in view of the submission made hereinabove, the claim petition of the petitioner may kindly be dismissed in the interest of law and justice and justice be done.

8. The respondents No. 3 to 7 *i.e.* Man Bahadur, Contractor VPO Telangi Mode, Reckong Peo, District Kinnaur, H.P., Hirpal Singh Negi, Contractor, VPO Pangi, Tehsil Kalpa, District Kinnaur, H.P., Roshan Kumar, Contractor, VPO Pangi, Tehsil Kalpa, District Kinnaur, H.P., Amit Kumar, VPO Pangi, Tehsil Kalpa, District Kinnaur, H.P. and Kanwar Singh, Contractor, VPO Pangi, Tehsil Kalpa, District Kinnaur, H.P. have been duly served in accordance with law but they have failed to appear before this Court, hence, *vide* order dated 24-9-2018 and

7-5-2019, they were proceeded against *ex-parte*. It is made clear that respondent No. 1 has chosen not to file any reply.

9. While filing rejoinder, the petitioner controverted the averments made thereto in the replies filed by respondent No. 1 and reaffirmed and reiterated those in the petition.

10. On elucidating the pleading of parties, the following issues were struck down for its final determination *vide* Court order dated 30-05-2019 :—

1. Whether the termination of the petitioner is violative of the provisions of section 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 as alleged. If so, to what relief the petitioner is entitled to? . . . *OPP*.
2. Whether the reference is not maintainable as alleged. If so its effects thereto? . . . *OPR*.
3. Whether the services of the petitioner was hired through a contractor and he was not the employee of respondent No. 1 as alleged. If so its effect thereto? . . . *OPR*.
4. Relief

11. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

12. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

13. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue No. 1	Yes. Entitled to lump sum compensation of ₹ 70,000/-. (₹ Seventy Thousand only)
Issue No. 2	No
Issue No. 3	Yes
Relief	Reference is answered in affirmative, as per operative part of award.

REASONS FOR FINDINGS

Issues No.1 to 3:

14. All these issues are intermingled and inter connected, as mutually existed and required the common appreciation of evidence, being taken up together for the purpose of their determination and adjudication.

15. To substantiate his case, the petitioner namely Ms. Shiksha Devi appeared into the witness dock as (PW-1) to depose that she was engaged as Data Entry Operator on 01-01-2008 in project run by respondent No. 1 at Reckong Peo. She continued as such till 30-8-2016 and her services were dispensed with after 30-6-2016 orally without issuing any notice. She approached the

respondent for her re-engagement but they refused to give her any work. After her illegal termination, six persons had been engaged by the respondent as attendants. The respondent had also engaged electricians and other tradesmen. Earlier in 2010, the respondent had terminated their services and they had been re-engaged after the respondents entered into an agreement with the representatives of the village in the presence of the Deputy Commissioner *vide* Mark P-1. Their land also been acquired for the project and as such she fall under the category of beneficiaries and the respondent had illegally terminated her services. She prayed that she be re-engaged with all consequential benefits including back-wages. She has placed on record the detail of the outsourced manpower as received under RTI Act, Mark A-2 and the application made by the 14 terminated workers in the year 2010 Mark A-3.

16. In cross-examination, on behalf of respondent No. 1, she admitted that initially she was not engaged with the respondent No. 1. She further admitted that she was not issued any appointment letter by respondent No. 1 nor any I card was issued by them. She denied that she was never working with the HPPCL and she had been engaged through a contractor. She admitted that her name is not reflected in (PW-2/A). She admitted that she has no documents to show that her attendance was marked with the HPPCL. She denied that she was an employee of respondent No. 2. She also admitted that she has not placed on record anything to show that she was a beneficiary.

17. In order to rebut, the respondent No. 1 examined one Shri Mahender Kumar, General Manager, Civil as (RW-1), who tendered in evidence his affidavit (RW-1/A) wherein he reiterated almost all the averments as made in the reply. He also tendered into evidence letter dated 31-3-2008 (RW-1/B), tender dated 31-3-2008 (RW-1/C), letter dated 7-11-2008 (RW-1/D), work order dated 1-1-2008 (RW-1/E), conditions (RW-1/F), work order dated 27-12-2008 (RW-1/G), conditions (RW-1/H), letter dated 2-3-2009 (RW-1/J), work order dated 2-3-2009 (RW-1/K), conditions (RW-1/L), work order dated 31-3-2009 (RW-1/M), conditions (RW-1/N), letter dated 1-12-2009 (RW-1/O), check list (RW-1/P), work order dated 1-12-2009 (RW-1/Q), conditions (RW-1/R), letter dated 30-9-2011 (RW-1/S), work order dated 30-9-2011 (RW-1/T), conditions (RW-1/U), letter dated 27-5-2014 (RW-1/V), work order dated 19-9-2011 (RW-1/W), letter dated 13-3-2011 (RW-1/X), letter dated 20-9-2012 (RW-1/Y), work order dated 20-9-2012 (RW-1/Z), letter dated 31-12-2012 (RW-1/AA), work order dated 31-12-2012 (RW-1/AB), letter dated 22-9-2014 (RW-1/AC), letter dated 30-3-2015 (RW-1/AD), work order dated 30-3-2015 (RW-1/AE), letter dated 31-3-2016 (RW-1/AF), work order dated 31-3-2016 (RW-1/AG), letter dated 11-5-2016 (RW-1/AH), work order dated 11-5-2016 (RW-1/AJ), work order dated 31-3-2016 (RW-1/AK) and work order dated 31-3-2016 (RW-1/AL).

18. In cross-examination, on behalf of petitioner he denied that the petitioner worked as Data entry operator in their project. He denied that the petitioner was terminated in the year, 2010. He admitted that there was a compromise effected between the parties before the Deputy Commissioner, Kinnaur on 7-7-2010 that the services of the petitioner shall be reinstated. He admitted that the land of the petitioner was acquired for setting up of the project. He denied that the petitioner had filed a complaint to them for not deducting the EPF. When cross-examined on behalf of respondent No. 3, he admitted that the petitioners were working with the respondent since 2010. He further admitted that as per the work orders the nature of work is computer operator.

19. Shri Arvind Negi, Advocate for respondent No. 2 *vide* his separate statement dated 23-3-2022 has stated that he does not want to lead any evidence *i.e.* oral and documentary on behalf of the respondent No. 3.

20. This is the entire oral as well as documentary evidence led from the side of the parties.

21. Shri Vikas Mishra, Learned counsel for the petitioner has contended with all vehemence that the petitioner was engaged as Computer operator/data operator by respondent No.1 in the month of June, 2008 and her services were illegally terminated by the respondent No. 1 by an oral dismissal order in the year 2016. Along-with the petitioner as many as eleven other persons and two chowkidars were also terminated. The matter was reconciled and with the intervention of the Deputy Commissioner, Kinnaur, their services were re-engaged. He has also argued that the termination of the services of the petitioner is in violation of the salient provision of the Act as well as Articles 14, 16 and 21 of the Constitution of India.

22. *Per contra*, Shri Manoj Chauhan, Ld. Counsel for the respondent No.1 argued that there exists no employee-employer relationship between petitioner and respondent No. 1. He further argued that the petitioner was never engaged by the respondent No.1 and no appointment letter has been issued to her and even no identity card has been placed on record by her. The petitioner has also failed to place on record the statement of account showing the salary allegedly to be paid by respondent No. 1. No documentary proof showing the contribution towards EPF and ESI has been placed on record. The petitioner has alleged that she was engaged as computer operator by the respondent No. 1, whereas the work order has been issued for data entry operator. The petitioner was the employee of the contractor, who deputed the petitioner with HPPCL. He prayed that the claim petition may kindly be dismissed.

23. Shri Arvind Negi, Ld. Counsel for the respondent No. 2, has contended that the petitioner neither pleaded nor proved on record that she was engaged by respondent No. 2. As a matter of fact, the petitioner was engaged by HPPCL. The petitioner has miserably failed to prove that she was the employee of respondent No. 2. He also prayed for the dismissal of the claim petition.

24. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the petitioner, as well Learned Counsel for the respondents No. 1 & 2 and have also scrutinized the entire case record with minute care, caution and circumspection.

25. Admittedly, the petitioner by way of placing on record oral and documentary proof had tried to establish on record to prove that the petitioner has been engaged and working with the respondent No. 1 till the time of her termination. The respondent No. 1 *i.e.* Kashang Hydro Electric Project under HPPCL had engaged the services of the petitioner who worked there for eight years *i.e.* 2008 to 2016. However, the petitioner herself deposed that Kashang Hydroelectric Project had engaged her services, in the very opening line of his cross-examination. According to her, she was engaged by HPPCL. The respondent No. 1 had issued the work orders inviting the job through contractors. However, the petitioner again twisted the fact by deposing that she was working with respondent No. 1 and engaged by them. She has also admitted that there were many contractors registered with HPPCL.

26. As a matter of fact, the present reference has been sent by the appropriate government qua the termination of the services of the petitioner by the respondents No. 1 to 7 w.e.f. 1-7-2016, without complying with the provisions of the Act, the petitioner having been engaged as a computer operator by the principal employer i.e. Kashang Hydro Electric Project, HPPCL through the contractors on outsource basis (Respondents No. 2 to 4). Thus, it is abundantly clear on record that the matter in controversy has been narrowed down in a short compass that whether the respondent No. 1, being principal employer had followed the basic and cardinal principles envisaged under the Act while terminating the services of the petitioner or not? It has been specifically pleaded from the side of the respondent No. 1 that the petitioner had been engaged for a specific time period through the contractor to which the allocation of work order has been issued for providing the manpower service in the Project, being awarded for a specific period throughout

the year. As a matter of fact, the work order for outsourcing various works including data entry is awarded in the beginning of any financial year considering the various service by flouting short term notice with the prior approval of the competent authority. The services of the petitioner were also outsourced through local contractors, who deployed the petitioner as per requirement, as such, the onus to deploying the manpower lies with the contractor/agency as per the terms and conditions of the contract. Initially, the petitioner was an employee of the contractor and was deployed with HPPCL on outsource basis. In fact, the petitioner has also admitted in his cross-examination that his services were not at all engaged by Kashang Hydro Electric Project or HPPCL. Though, she has tried to improve her version by stating that she was engaged and terminated by respondent no.1 but it is merely an afterthought expression and cannot replace the earlier version as deposed by her in his cross-examination.

27. Verily, much stress has been placed on record from the side of the petitioner to the agreement (PW-2/A), executed between the parties *i.e.* the representatives of HPPCL, the representatives Pariyojna Prabhavit Sabha, Village Pangi (effected community) before the Deputy Commissioner, Kinnaur on 7-7-2010 wherein it has been amicably agreed by all the concerned parties that 14 workers terminated by M/s HPPCL shall be provided livelihood by HPPCL till they got employment through HPPCL or some other agency. Seven new recruitments from Pangi Village shall be done through M/s HCC Ltd., within 0-7 days from the date of call off strike subject to permission by the Hon'ble High Court. It is contended before me that the petitioner and eleven other workers were terminated by the respondent No. 1 and with the intervention of Deputy Commissioner, Kinnaur, their services were restored on 19-8-2010 and a compromise was effected. Though, the petitioner has miserably failed to establish on record that initially he was engaged by respondent No. 1 *i.e.* HPPCL. Neither any appointment letter nor any termination letter has been placed on record. From the recital of the agreement dated 7-7-2010, executed before the Deputy Commissioner, Kinnaur. There was an agreement executed between the parties that the representatives of Project effected members shall be provided the livelihood by HPPCL. Such a recital shall not give any right to the petitioner that he was engaged/appointed by respondent No. 1. More so, the recital of agreement (PW-2/A) dated 7-7-2010, shall not come in any way to substantiate the plea raised from the side of the petitioner. The initial burden lies on the petitioner to prove that he was not engaged by the contractors but by HPPCL.

28. Now, the question which arises for determination before this Tribunal that what relevancy, authenticity and legality attached to the writing dated 7-7-2010 (PW-2/A). All the recital made thereto in such writing amounts to a stop gap arrangement whereby it was resolved by the representatives of all the parties concerned to reconcile the matter. However, providing of livelihood by the respondent No. 1 to the workers, who were terminated by outsourcing agency/contractor, shall providing or offering any appointment/engagement to the petitioner with the respondent No. 1. It is quite apparent on the face of the record that the petitioner was not engaged by the respondent No. 1 directly rather he was engaged on outsource basis through contractor.

29. The next question arise before me that whether the termination of the services of the petitioner *w.e.f.* 1-7-2016, is violative of the provisions of the Act. Amongst arraying both the contractors, as the contesting respondents, one of them while contesting the claim petition averred that the petitioner has neither been engaged by the replying respondent nor terminated her services. The petitioner was engaged by the respondent No. 1. No legal or vested rights of the petitioner have been infringed by the respondent No. 2 in any manner. However, the petitioner as (PW-1) during cross-examination by respondent No. 2 admitted that she was working with respondent No. 1 and she was engaged by respondent No. 1. She was not engaged by respondent No. 2. The contractors are not known to her personally. She has not claimed any particular relief against contractors. All her service conditions were being maintained and supervised by respondent No. 1. All the

contentions raised at bar are devoid of merits. In my humble opinion, the petitioner miserably failed to lead any cogent, clear and clinching evidence to establish on record that she was engaged by respondent No. 1. In any case, the petitioner has also failed to produce on record any documentary proof regarding her engagement, oral termination, service conditions and over all supervision and control by respondent No. 1. Mere oral deposition in the absence of any cogent documentary proof assumes no significance in the eyes of law. Furthermore, the averments made thereto in the reply filed by respondent No. 1 are fully corroborated by the respondent No. 1 witness Shri Mahender Kumar General Manager, Civil, HPPCL (RW-1), wherein he has categorically stated that the entire dues to the petitioner is shown to have been paid by the respondent. The petitioner was never engaged by respondent No. 1 in any field of work/job at any point of time. The services of the petitioner were engaged on outsource basis through the contractor to whom the respondent No.1 has awarded the work orders from time to time. The petitioner was the employee of contractor and deployed with HPPCL, on outsource through contractors. Undoubtedly, there was an agreement executed before the Deputy Commissioner, Kinnaur on 7-7-2010 whereby the representatives of project effected members, representatives of HPCL and representatives of HCCL were signatory to the said writings. Simple, on the score that the officers of the HPPCL put their signatures to the said writing shall not provide any employment/engagement to the petitioner. The respondent witness categorically admitted that the petitioner filed complaint before the Deputy Commissioner, Kinnaur. The EPF of the petitioner was deducted by the contractor. He also admitted that the agreement bears the signatures of General Manager, Deputy General Manager of HPPCL respectively being representatives of HPPCL. However, he feigned ignorance that the petitioner was engaged as computer operator. He admitted that after the issuance of the work orders, the same has been accepted by the contractors. Admittedly, the respondent No. 1 being principal employer had engaged the services of the petitioner through the contractors though there is a denial on the part of the contractors. It is now fairly established that the services of the petitioner were engaged by the contractors and deployed with HPPCL. It is also admitted position on record that the contractors while terminating the services of the petitioner is to comply with the requirement of the law. The very action on the part of the respondents while terminating the services of the petitioner has to fall within the four corners of the definition of "retrenchment" as envisaged under section 2-oo (bb) of the Act, hence, the termination of the services of the petitioner is held to be bad and nonest in the eyes of law. Since, the petitioner has completed the requirement of days as fixed by the Government for Tribal area, hence, she is also entitled for the protection of section 25-F of the Act. It is also admitted fact that before retrenching the services of the petitioner neither any notice had been issued nor any compensation has been paid. Therefore, in view of the above discussion, I am satisfied that the workman was terminated illegally and unjustifiably without complying with section 25-F of the Act, which provides as under:

"No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until :

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government for such authority as may be specified by the appropriate Government by notification in the Official Gazette".

30. So, in view of this enabling provision of the act, no workman employed in any industry, who has been in "continuous service" for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25-B of the Act, which in its material part reads:

"25B. Definition of continuous service. For the purposes of this Chapter,—

- (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;*
- (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—*
 - (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—*
 - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and*
 - (ii) two hundred and forty days, in any other case...."*

31. Since, the petitioner is proved to have completed more than 180 days (as applicable in Tribal area) during the period of twelve calendar months in the preceding year from the date of her retrenchment, her services could not have been terminated unless she was served with one month's mandatory notice and paid the retrenchment compensation, as envisaged under Section 25-F of the Act. Admittedly, the provisions of Section 25-F of the Act were not followed or complied with by the respondent in the latter and spirit. The respondent did not pay the retrenchment compensation to the petitioner, nor had issued any requisite notice to the petitioner.

32. In the back-drop of aforesaid events, it is held that the termination of the petitioner was in violation of the provisions of Sections 25-B and 25-F of the Act. The termination is held to be illegal, unlawful and unjustified.

33. Now, the question arises as to what relief, the workman is entitled to? Their Lordships of Hon'ble Supreme Court in an authority reported as The Workmen of **M/s Firestone Tyre & Rubber Co. of India (Pvt.) Ltd. etc. vs. The Management & Ors. 1973 (1) SCC 813**, Hon'ble Supreme Court observed as under:

"10. In a particular case, after setting aside the order of dismissal, whether a workman should be reinstated or paid compensation is, as held by this Court in The Management of Panitole Tea Estate Vs. The workmen (1971) 1 SCC 742 within the judicial decision of a Labour Court of Tribunal."

34. Similarly, Their Lordship of Hon'ble Delhi High Court in another authority reported as **Nehru Yuva Kendra Sangathan Vs. Union of India & Ors. 2000 IV AD (Delhi) 709**, Hon'ble

Delhi High Court dealt with the question of reinstatement and back wages and observed 28 as under:

"The decision of the Supreme Court rendered in the 1970s and 1980s that reinstatement with back wages was the norm in cases where the termination of the services of the workman was held inoperative. The decisions rendered in the 1990s, including the decision of the Constitution Bench in the Punjab Land Development and Reclamation Corporation Ltd., Chandigarh seem to suggest that compensation in lieu of reinstatement and back wages is now the norm. In any case, since I am bound to follow the decision of the Constitution Bench, I, therefore, conclude that reinstatement is not the inevitable consequence of quashing an order of termination; compensation can be awarded in lieu of reinstatement and back wages."

35. To combat with, I am persuaded to award compensation in lieu of reinstatement and back wages to the workman.

36. Similarly, Their Lordships of Hon'ble Supreme Court in another authority reported as **M.L. Binjolkar Vs. State of Madhya Pradesh, 2005 VI (S.C.) 413**, Hon'ble Supreme Court observed in paragraph 7 as under :

"Though the High Court has not specifically dealt with the question as to what would be the appropriate quantum, keeping in view the law laid down by this Court in various cases e.g. Hindustan Motors Ltd. Vs. Tapanj Kumar Bhattacharya & Anr. (2002 (6) SCC 41), Rajendra Prasad Arya Vs. State of Bihar (200 (9) SCC 514), Sonapat Cooperative Sugar Mills Ltd. Vs. Ajit Singh (2005 (3) SCC 232), Haryana State Cooperative Land Development Bank Vs. Neelam (2005 (5) SCC 91), Manager, Reserve Bank of India, Bangalore Vs. S. Mani & Ors. (2005 (5) SCC 100) and Allahabad Jal Sansthan Vs. Daya Shankar Rai & Anr. (2005 (5) SCC 124), we do not find any scope for interference. The earlier view was that whenever there is interference with the order of termination or retirement, full back wages were the natural corollary. It has been laid down in the cases noted above that it would depend upon several factors and the court has to weigh the pros and cons of each case and to take a pragmatic view."

37. Their Lordship of Hon'ble Supreme Court in another authority reported as **U.P. State Brassware Corporation Limited and another Vs. Uday Narain Pandey, (2006) 1 SCC 479**, wherein the Hon'ble Supreme Court, observed as under:

"A Division Bench of this Court in **M.L. Binjolkar v. State of M.P. (2005) 6 SCC 224**, referring to a large number of decisions, held as under:

"The earlier view was that whenever there is interference with the order of termination or retirement, fullback wages were the natural corollary. It has been laid down in the cases noted above that it would depend upon several factors and the Court has to weigh the pros and cons of each case and to take a pragmatic view."

38. In the exposition of law enumerated hereinbefore, now, I would like to examine the merits of the case.

39. In the instant case, the petitioner was engaged by the respondent No. 1 through contractors. The petitioner had worked in the capacity of workman. Since, the services of the petitioner were not directly engaged by the respondent no.1, hence, the only remedy available with this Tribunal is to award compensation amount to the petitioner in lump sum amount.

40. Recent developments, particularly the trends particularly much after the year 2007 shows that grant of compensation in lieu of reinstatement has gained precedence, more particularly, where the services of the workmen have been terminated because of procedural defects. In the case in hand too the termination is found to be illegal in view of the provisions Act, both ends of justice would thus be met, in case the petitioner is granted compensation in lieu of reinstatement thereof. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court titled as **Bharat Sanchar Nigam Ltd. Vs. Bhurumal (2014) 7 SCC 177** and further reiterated lately in **P. Karupaiah (dead) through Legal Representatives Vs. General Manager, Thruuvalluvar Transport Corporation Ltd. (2018) 12 SCC 663 and Rashtrasant Tukdoji Maharaj Technical Education Samnatha, Nagpur Vs. Prashant Manikrao Kubitkar (2018) 12 SCC 294.**

41. For the foregoing reasons and keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above, the petitioner is held entitled for a lump sum compensation amount of ₹ 70,000/- (₹ Seventy Thousand only) as lump sum compensation from the respondents who are jointly and severally liable to pay the awarded amount to the petitioner. All these issues are decided accordingly.

Relief :

42. As a sequel to my above discussion and findings on issues No. 1 to 3, the claim of the petitioner succeeds and is hereby allowed and the petitioner is awarded lump sum compensation of ₹ 70,000/- (Rupees Seventy Thousand only) to the workman, to be paid by the respondents within two months from the date of announcement of the award, failing which interest at the rate of 9% (nine percent) would be payable by the respondents to the workman. It is expressly made clear that apart from lump sum compensation, **the petitioner is entitled for all his legal dues i.e. gratuity, leave encashment, EPF, ESI etc.**, admissible if any, in accordance with law. The reference is disposed off in the aforesaid terms. Let a copy of this award be communicated to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 1st day of June, 2022.

Sd/-
(RAJESH TOMER),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Reference Number : 09 of 2019
Instituted on : 28-12-2018
Decided on : 01-06-2022

Man Singh s/o Shri Shyam Lal, r/o VPO Darmana, Tehsil Nalagarh, District Solan, H.P.
..Petitioner.

VERSUS

The Managing Director M/s Torrent Pharmaceuticals Ltd., Near Baddi University, Village Bhud Makhu Majra, Tehsil Baddi, District Solan, H.P. . Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri Prateek Kumar, Advocate

For respondent : Shri Rajiv Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government *vide* notification dated 31-10-2018, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

“Whether termination of the service of Shri Man Singh s/o Shri Shyam Lal r/o VPO Darmana, Tehsil Nalagarh, District Solan, H.P. after conducting domestic enquiry *w.e.f.* 1-3-2018 by the Managing Director M/s Torrent Pharmaceuticals Ltd., Near Baddi University, Village BhudMakhuMajra, Tehsil Baddi, District Solan, H.P. without complying with the provision of the Industrial Dispute Act, 1947, as alleged by the workman, is legal and justified? If not, what relief including re-instatement, amount of back wages, past service benefits and compensation, the above ex-worker is entitled to from the above employer?”

2. On receipt of the said reference from the Appropriate Government, notices were issued to the concerned parties in pursuance to which the petitioner has filed his statement of claim.

3. Shri Prateek Kumar, Ld. Counsel for the petitioner has stated at bar that the matter arising out of the reference No. 09 of 2019 stood amicably resolved by way of an amicable settlement. He has placed on record memorandum of settlement (PX), copy of cheque (PY) and resignation letter (PZ). He further stated that as agreed between the parties, a sum of ₹ 3,20,000/- (₹ Three Lacs Twenty Thousand only) and gratuity amount has been paid to the petitioner as full & final settlement amount and now nothing survive in the present claim petition preferred by him under section 10(3) of the Act. He prayed that since the matter stood amicably resolved, therefore, the present matter may kindly be decided accordingly. To this effect this statement recorded separately and placed on record.

4. On the other hand, Shri Praveen Sharma, Manager HR *vide* his separate statement has stated that the matter *inter-se* the parties stood amicably resolved by way of amicable settlement and as per the settlement the respondent company has paid a sum of ₹ 3,20,000/- (₹ Three Lacs Twenty Thousand only) and gratuity amount to the petitioner. Nothing survives in the present petition and the statement made by the petitioner is acceptable to him.

5. Thus, keeping in view the attendant facts and circumstances of the case vis-a-vis perusal of the case record manifestly and conclusively goes to demonstrates that the Industrial Dispute raised from the side of the petitioner stood amicably resolved and finally compromised by the petitioner and the respondent has paid a sum ₹ 3,20,000/- (₹ Three Lacs Twenty Thousand only) and gratuity amount as full and final settlement amount of the claim. From the aforesaid statements of the parties, it is apparently established that the parties have compromised the industrial dispute arising out of reference No. 09 of 2019.

6. Since, the matter stood amicably resolved and settled between the parties by way of amicable settlement, therefore, nothing survives in the present industrial dispute. **Consequently, the industrial dispute raised by the petitioner stood amicably settled to which the petitioner has been fully & finally compensated by paying ₹ 3,20,000/- (₹ Three Lacs Twenty Thousand only) and gratuity amount** as lump sum compensation. The reference is answered accordingly and the award is passed as per the statements of both the parties and documents *i.e.* memorandum of settlement (PX), copy of cheque (PY) and resignation letter (PZ), shall form the integral part and parcel of this award. The reference is disposed off accordingly. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:
1-6-2022.

Sd/-
(RAJESH TOMER),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

**IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 110 of 2019

Instituted on : 8-7-2019

Decided on : 01-06-2022

Sarvjeet s/o late Shri Gopal r/o 12, Gharki Line, House No.7, Krishnanagar, Shimla, H.P.
.. *Petitioner.*

VERSUS

The Secretary, Kali bari Temple, Shimla Kali Bari, Shimla-1, H.P. .. *Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri KuldeepGuleria, Advocate

For respondent : Shri D.K Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government *vide* notification dated 4-7-2019, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

“Whether termination of the service of Sarvjeet s/o late Shri Gopal, r/o 12, Gharki Line, House No. 7, Krishnanagar, Shimla, H.P. by the Secreatry Kali Bari temple, Shimla Kali Bari, Shimla-1 H.P. *w.e.f.* 1-7-2018 without complying with the provision of the Industrial

Dispute Act 1947, as alleged by the workman, is legal and justified? If not, what relief including re-instatement, seniority, amount of back wages, past service benefits and compensation, the above ex-worker is entitled to from the above employer?"

2. On receipt of the said reference from the Appropriate Government, notices were issued to the concerned parties in pursuance to which the petitioner has filed his statement of claim.

3. The petitioner Shri Sarvjeet Singh has stated at bar that he has raised the demand notice qua the termination of the services by the respondent *w.e.f.* 1-7-2018 without complying the provisions of the Industrial Disputes Act to which reference has been received from the appropriate government *vide* notification dated 4-7-2019. The industrial dispute stood amicably settled between the parties and as per the settlement, the respondent had agreed to pay lump sum compensation for the industrial dispute raised by him amounting to ₹ 45,000/- (₹ Forty Five Thousand only) on or before 1-6-2022 as full & final payment which is acceptable to him. Nothing survive in the present claim petition preferred by him under section 10(3) of the Act. He prayed that since the matter stood amicably resolved, therefore, the present matter may kindly be decided accordingly. To this effect this statement recorded separately and placed on record.

4. On the other hand, Shri Som Nath, Secretary of Temple Trust *vide* his separate statement has stated that the matter inter-se the parties stood amicably resolved by way of amicable settlement and as per the settlement the respondent is ready and willing to pay a sum of ₹ 45,000/- (₹ Forty Five Thousand only) to be paid on or before 1-6-2022. Nothing survives in the present petition and the statement made by the petitioner is acceptable to him.

5. Thus, keeping in view the attendant facts and circumstances of the case vis-a-vis perusal of the case record manifestly and conclusively goes to demonstrates that the Industrial Dispute raised from the side of the petitioner stood amicably resolved and finally compromised by the petitioner and the respondent has agreed to pay a sum of ₹ 45,000/- (₹ Forty five Thousand only) as full and final settlement amount of the claim. From the aforesaid statements of the parties, it is apparently established that the parties have compromised the industrial dispute arising out of reference No. 110 of 2019.

6. Since, the matter stood amicably resolved and settled between the parties by way of amicable settlement, therefore, nothing survives in the present industrial dispute. **Consequently, the industrial dispute raised by the petitioner stood amicably settled to which the petitioner has been fully & finally compensated by paying ₹ 45,000/- (₹ Forty five Thousand only)** as lump sum compensation. The reference is answered accordingly and the award is passed as per the statements of both the parties which shall form the integral part and parcel of this award. The reference is disposed off accordingly. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced :
1-6-2022.

Sd/-
(RAJESH TOMER),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

**IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 111 of 2019

Instituted on : 8-7-2019

Decided on : 01-06-2022

Pradeep Kumar r/o Village Mamnu, P.O. Namhol, Tehsil Sadar, District Bilaspur, H.P.
.. *Petitioner.*

VERSUS

The Secretary, Kali Bari Temple, Shimla Kali Bari, Shimla-1, H.P. . *Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri Kuldeep Guleria, Advocate

For respondent : Shri D. K. Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government *vide* notification dated 4-7-2019, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

“Whether termination of the service of Pradeep Kumar r/o Village Mamnu, P.O. Namhol, Tehsil Sadar, District Bilaspur, H.P. by the Secreatry kali Bari temple, Shimla kali Bari Shimla-1 H.P. *w.e.f.* 1-7-2018 without complying with the provision of the Industrial Dispute Act 1947, as alleged by the workman, is legal and justified? if not, what relief including re-instatement, seniority, amount of back wages, past service benefits and compensation, the above ex-worker is entitled to from the above employer?”

2. On receipt of the said reference from the Appropriate Government, notices were issued to the concerned parties in pursuance to which the petitioner has filed his statement of claim.

3. The petitioner Shri Pradeep Kumar has stated at bar that he has raised the demand notice qua the termination of the services by the respondent *w.e.f.* 1-7-2018 without complying the provisions of the Industrial Disputes Act to which reference has been received from the appropriate government *vide* notification dated 4-7-2019. The industrial dispute stood amicably settled between the parties and as per the settlement, the respondent had agreed to pay lump sum compensation for the industrial dispute raised by him amounting to ₹ 45,000/- (₹ Forty five Thousand only) on or before 1-6-2022 as full & final payment which is acceptable to him. Nothing survive in the present claim petition preferred by him under section 10(3) of the Act. He prayed that since the matter stood amicably resolved, therefore, the present matter may kindly be decided accordingly. To this effect this statement recorded separately and placed on record.

4. On the other hand, Shri Som Nath, Secretary of Temple Trust *vide* his separate statement has stated that the matter *inter-se* the parties stood amicably resolved by way of amicable

settlement and as per the settlement the respondent is ready and willing to pay a sum of ₹ 45,000/- (₹ Forty five Thousand only) to be paid on or before 1-6-2022. Nothing survives in the present petition and the statement made by the petitioner is acceptable to him.

5. Thus, keeping in view the attendant facts and circumstances of the case vis-a-vis perusal of the case record manifestly and conclusively goes to demonstrate that the Industrial Dispute raised from the side of the petitioner stood amicably resolved and finally compromised by the petitioner and the respondent has agreed to pay a sum of ₹ 45,000/- (₹ Forty five Thousand only) as full and final settlement amount of the claim. From the aforesaid statements of the parties, it is apparently established that the parties have compromised the industrial dispute arising out of reference No. 111 of 2019.

6. Since, the matter stood amicably resolved and settled between the parties by way of amicable settlement, therefore, nothing survives in the present industrial dispute. **Consequently, the industrial dispute raised by the petitioner stood amicably settled to which the petitioner has been fully & finally compensated by paying ₹ 45,000/- (₹ Forty five Thousand only) as lump sum compensation.** The reference is answered accordingly and the award is passed as per the statements of both the parties which shall form the integral part and parcel of this award. The reference is disposed off accordingly. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:
1-6-2022.

Sd/-
(RAJESH TOMER),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

**IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 112 of 2019

Instituted on : 8-7-2019

Decided on : 01-06-2022

Vijay Kumar s/o Shri Sugan Chand, r/o Village Bara House, Line Ruldu Bhatta, MC Lakkar
Bazar Shimla, H.P. . *Petitioner.*

VERSUS

The Secretary, Kali Bari Temple, Shimla Kali Bari, Shimla-1, H.P. . *Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri Kuldeep Guleria, Advocate

For respondent : Shri D.K Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government *vide* notification dated 4-7-2019, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

“Whether termination of the service of Vijay Kumar s/o Shri Sukan Chand, r/o Village Bara House, Line Ruldu Bhatta, MC Lakkar Bazar, Shimla H.P. by the Secretary Kali Bari Temple, Shimla Kali Bari Shimla-1 H.P. *w.e.f.* 1-7-2018 without complying with the provision of the Industrial Dispute Act, 1947, as alleged by the workman, is legal and justified? If not, what relief including re-instatement, seniority, amount of back wages, past service benefits and compensation, the above ex-worker is entitled to from the above employer?”

2. On receipt of the said reference from the Appropriate Government, notices were issued to the concerned parties in pursuance to which the petitioner has filed his statement of claim.

3. The petitioner Shri Vijay Kumar has stated at bar that he has raised the demand notice *qua* the termination of the services by the respondent *w.e.f.* 1-7-2018 without complying the provisions of the Industrial Disputes Act to which reference has been received from the appropriate government *vide* notification dated 4-7-2019. The industrial dispute stood amicably settled between the parties and as per the settlement, the respondent had agreed to pay lump sum compensation for the industrial dispute raised by him amounting to ₹ 25,000/- (₹ Twenty Five Thousand only) on or before 1-6-2022 as full & final payment which is acceptable to him. Nothing survive in the present claim petition preferred by him under section 10 (3) of the Act. He prayed that since the matter stood amicably resolved, therefore, the present matter may kindly be decided accordingly. To this effect this statement recorded separately and placed on record.

4. On the other hand, Shri Som Nath, Secretary of Temple Trust *vide* his separate statement has stated that the matter *inter-se* the parties stood amicably resolved by way of amicable settlement and as per the settlement the respondent is ready and willing to pay a sum of ₹ 25,000/- (₹ Twenty Five Thousand only) to be paid on or before 1-6-2022. Nothing survives in the present petition and the statement made by the petitioner is acceptable to him.

5. Thus, keeping in view the attendant facts and circumstances of the case vis-a-vis perusal of the case record manifestly and conclusively goes to demonstrates that the Industrial Dispute raised from the side of the petitioner stood amicably resolved and finally compromised by the petitioner and the respondent has agreed to pay a sum of ₹ 25,000/- (₹ Twenty Five Thousand only) as full and final settlement amount of the claim. From the aforesaid statements of the parties, it is apparently established that the parties have compromised the industrial dispute arising out of reference No. 112 of 2019.

6. Since, the matter stood amicably resolved and settled between the parties by way of amicable settlement, therefore, nothing survives in the present industrial dispute. **Consequently, the industrial dispute raised by the petitioner stood amicably settled to which the petitioner has been fully & finally compensated by paying ₹ 25,000/- (₹ Twenty five Thousand only) as lump sum compensation.** The reference is answered accordingly and the award is passed as per the statements of both the parties which shall form the integral part and parcel of this award. The reference is disposed off accordingly. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:
1-6-2022.

Sd/-
(RAJESH TOMER),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

**IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 125 of 2021

Instituted on : 16-6-2021

Decided on : 01-06-2022

Poonam, President Gini and Jony karamchari Sangh, Plot No. 47, EPIP, Phase-1, Jharmajri,
Tehsil Baddi, District Solan, H.P. . *Petitioner.*

VERSUS

The Occupier/Factory Manager M/s Gini and Jony Ltd., Plot No. 47 EPIP, Phase-1,
Jharmajri, Tehsil Baddi, District Solan, H.P. . *Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Ms. Pushpa, Advocate

For respondent: Shri B.S. Jaswal, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government *vide* notification dated 10-6-2021, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

“Whether the demands at Sr. No. 6 regarding payment of bonus, Sr. No. 8 regarding unauthorized deduction of 30% from the salary, Sr. No. 9 regarding giving hike of 15% in salary, Sr. No. 11 regarding reinstatement of all the retrenched workmen, raised vide demand notice dated 1-2-2021 by Smt. Poonam, President Gini and Jony karamchari Sangh, Plot No. 47, EPIP, Phase-1, Jharmajri, Tehsil Baddi, District Solan, to be fulfilled by the Occupier/Factory Manager M/s Gini and Jony Ltd., Plot No. 47 EPIP, Phase-1, Jharmajri, Tehsil Baddi, District Solan, H.P. is justified? If yes, to what monetary and other consequential service benefits, the above mentioned workmen are entitled to from the above employer?”

2. On receipt of the said reference from the Appropriate Government, notices were issued to the concerned parties in pursuance to which Shri Khushi Ram Verma, Advocate has appeared on behalf of the petitioner and Shri B.S. Jaswal, Advocate has appeared for respondent.

3. Both the petitioners namely Poonam, President and Prem Lata, General Secretary unequivocally stated at the bar as per their joint statement that the matter arising out of reference petition No. 125/2021 stood amicable resolved between the parties and placed on record memorandum of settlement (PX) which bears their signatures. Since, the matter stood amicably resolved, hence, they do not want to proceed further with the present reference petition. Both the petitioners prayed that since the matter stood amicably resolved, therefore, the present matter may kindly be decided accordingly. To this effect their joint statement recorded separately and placed on record.

4. On the other hand, Shri B.S. Jaswal, Ld. Counsel for the respondent *vide* his separate statement has stated that the matter *inter-se* the parties stood amicably resolved by way of amicable settlement (PX). Nothing survives in the present petition and the statement made by the petitioners is acceptable to him.

5. Thus, keeping in view the attendant facts and circumstances of the case vis-a-vis perusal of the case record manifestly and conclusively goes to demonstrates that the Industrial Dispute raised from the side of the petitioners stood amicably resolved between the parties as per memorandum of settlement (PX). From the aforesaid statements of the parties, it is apparently established that the parties have compromised the industrial dispute arising out of reference No. 125 of 2021.

6. Since, the matter stood amicably resolved and settled between the parties by way of amicable settlement, therefore, nothing survives in the present industrial dispute. **Consequently, the industrial dispute raised by the petitioner stood amicably settled.** The reference is answered accordingly and the award is passed as per the statements of both the parties and memorandum of settlement (PX) shall form the integral part and parcel of this award. The reference is disposed off accordingly. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:
1-6-2022.

Sd/-
(RAJESH TOMER),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

**IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number	: 174 of 2018
Instituted on	: 04-10-2018
Decided on	: 01-06-2022

Pankaj Sharma s/o Shri Gineshwar Sharma, r/o Village Dhomon, P.O. Panesh, Tehsil & District Shimla, H.P. (since deceased).

1. Suman Sharma w/o late Shri Pankaj Sharma

2. Ridhi Sharma d/o Late Shri Pankaj Sharma
3. Ritik S/o Late Shri Pankaj Sharma
4. Urmila Sharma w/o Shri Ganeshwar Sharma

All r/o Village Dhomon, P.O. Panesh, Tehsil & District Shimla, H.P. (Legal heirs)

. .Petitioner.

VERSUS

1. The Registrar Bahara University, Shimla Hills, Wagnaghat, Tehsil Kandaghat, District Solan, H.P.

2. The Director Administration, Bahara University, Shimla Hills, Wagnaghat, Tehsil Kandaghat, District Solan, H.P. . .Respondents.

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner Shri J.C. Bhardwaj, AR

For respondent: Shri R. K. Khidta, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government *vide* notification dated 21-8-2018, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

“Whether termination of the service of Shri Pankaj Sharma s/o Shri Gineshwar Sharma, r/o Village Dhomon, P.O. Panesh, Tehsil & District Shimla, H.P. by the (i) The Registrar Bahara University, Shimla Hills, Wagnaghat, Tehsil Kandaghat, District Solan, H.P. (ii) The Director Administration, Bahara University, Shimla Hills, Wagnaghat, Tehsil Kandaghat, District Solan, H.P. *w.e.f.* 18-8-2017 without complying with the provision of the Industrial Dispute Act 1947, as alleged by the workman, is legal and justified? if not, what relief including re-instatement, amount of back wages, re-instatement, seniority, past service benefits and compensation, the above ex-worker is entitled to from the above employer/ management?”

2. On receipt of the said reference from the Appropriate Government, notices were issued to the concerned parties in pursuance to which the petitioner (since deceased) has filed his statement of claim.

3. Ms. Suman Sharma w/o Pankaj Sharma (petitioner) has stated at bar that the petitioner Shri Pankaj Sharma has been died during the course of proceedings before this Court. She further stated that the matter arising out of the reference No. 174 of 2018 stood amicably resolved by way of an amicable settlement. She further stated that the respondent is ready and willing to pay a sum of ₹ 25,000/- (₹ Twenty Five Thousand only) towards full and final settlement amount which is acceptable to her. Now nothing survive in the present claim petition preferred by Shri Pankaj Sharma (deceased) under section 10 (3) of the Act. She prayed that since the matter stood amicably resolved, therefore, the present matter may kindly be decided accordingly. To this effect her statement recorded separately and placed on record.

4. On the other hand, Shri Vinit Kumar, Registrar of the respondent university *vide* his separate statement has stated that the matter *inter-se* the parties stood amicably resolved by way of amicable settlement and as per the settlement the respondent university is ready and willing to pay a sum of ₹ 25,000/- (₹ Twenty Five Thousand only) to the widow of late Shri Pankaj Sharma (petitioner) on or before 10-6-2022. Nothing survives in the present petition and the statement made by the petitioner is acceptable to him.

5. Thus, keeping in view the attendant facts and circumstances of the case vis-a-vis perusal of the case record manifestly and conclusively goes to demonstrate that the Industrial Dispute raised from the side of deceased Shri Pankaj Sharma stood amicably resolved and finally compromised by the legal heirs of the deceased Smt. Suman Sharmaby paying a sum of ₹ 25,000/- (₹ Twenty Five Thousand only). From the aforesaid statements of the parties, it is apparently established that the parties have compromised the industrial dispute arising out of reference No. 174 of 2018.

6. Since, the matter stood amicably resolved and settled between the parties by way of amicable settlement, therefore, nothing survives in the present industrial dispute. **Consequently, the industrial dispute raised by the petitioner stood amicably settled to which the wife of the petitioner has been fully & finally compensated by paying ₹ 25,000/- (₹ Twenty Five Thousand only as lump sum compensation.** The reference is answered accordingly and the award is passed as per the statements of both the parties which shall form the integral part and parcel of this award. The reference is disposed off accordingly. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:
1-6-2022.

Sd/-
(RAJESH TOMER),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

**IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 140 of 2020

Instituted on : 10-07-2020

Decided on : 01-06-2022

Ms. Neha Verma d/o Shri Shri Roop Ram Verma r/o Village Baddu, P.O. Goela, Tehsil & District Solan, H.P. *Petitioner.*

VERSUS

The Manager M/s Green Valley Institute of Beauty and Wellness, Opposite Baghat Co-operative Bank Ltd. Rajgarh Road, Solan, District Solan, H.P. *Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri J. C. Bhardwaj, AR

For respondent : Shri Prateek Kumar, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government *vide* notification dated 30-6-2020, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

“Whether termination of the service of Ms. Neha Verma d/o Shri Shri Roop Ram Verma r/o Village Baddu, P.O. Goela, Tehsil & District Solan, H.P. *w.e.f.* 22-11-2018 by the Manager M/s Green Valley Institute of Beauty and Wellness, Opposite Baghat Co-operative Bank Ltd. Rajgarh Road, Solan, District Solan, H.P. without conducting a domestic enquiry, without paying the wages for the month of November, 2018+security money, incentive and without complying with the provision of the Industrial Dispute Act, 1947, as alleged by the workman, is legal and justified? If not, what relief including re-instatement, amount of back wages, past service benefits and compensation, the above ex-worker is entitled to from the above employer?”

2. On receipt of the said reference from the Appropriate Government, notices were issued to the concerned parties in pursuance to which the petitioner has filed her statement of claim.

3. The petitioner who appeared in person before this Court has stated at bar that the dispute arising out of reference No. 140 of 2020 stood amicably settled between the parties by way of amicable settlement. She has also placed on record the settlement deed (PX). She categorically stated that the respondent has agreed to pay one month's salary and amount of ₹ 15,000/- as full & final settlement of her claim which includes back dues, overtime, gratuity, bonus and all unpaid wages for the entire period of her employment. To this effect her statement recorded separately and placed on record.

4. On the other hand, *vide* separate statement Shri Saurav Gupta, respondent has stated that the matter inter-se the parties stood amicably resolved by way of amicable settlement and as per the settlement the respondent is ready and willing to pay one month's salary and amount of ₹ 15,000/- as full & final settlement to the petitioner which includes back dues, overtime, gratuity, bonus and all unpaid wages for the entire period of her employment. Nothing survives in the present petition and the statement made by the petitioner is acceptable to him.

5. Thus, keeping in view the attendant facts and circumstances of the case vis-a-vis perusal of the case record manifestly and conclusively goes to demonstrates that the Industrial Dispute raised from the side of the petitioner stood amicably resolved and finally compromised by the petitioner and the respondent has agreed to pay one month's salary and amount of ₹15,000/- as full & final settlement of her claim which includes back dues, overtime, gratuity, bonus and all unpaid wages for the entire period of her employment. From the aforesaid statements of the parties, it is apparently established that the parties have compromised the industrial dispute arising out of reference No. 140 of 2020.

6. Since, the matter stood amicably resolved and settled between the parties by way of amicable settlement, therefore, nothing survives in the present industrial dispute. **Consequently, the industrial dispute raised by the petitioner stood amicably settled to which the petitioner**

has been fully & finally compensated by paying one month's salary and amount of ₹ 15,000/- as full & final settlement of her claim. The reference is answered accordingly and the award is passed as per the statements of both the parties which shall form the integral part and parcel of this award. The reference is disposed off accordingly. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:
1-6-2022.

Sd/-
(RAJESH TOMER),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Application Number : 140 of 2019

Instituted on : 27-9-2018

Decided on : 01-06-2022

Vinod Kumar s/o Shri Ranpur Singh c/o Sheel Cot age, Ward No. 12 VPO Taksal Tehsil Kasauli, District Solan, H.P. . *Petitioner.*

VERSUS

The Factory Manager/Occupier M/s Mahadev Pharmaceutical Kasauli Road Parwanoo, Tehsil Kasauli, District Solan, H.P. . *Respondent.*

Application under section 2 (a) of the Industrial Disputes Act, 1947

For petitioner : Shri Prateek Kumar, Advocate

For respondent : Shri Rajiv Sharma, Advocate

AWARD

The present application has been preferred by the petitioner under section 2-A of the Industrial Disputes Act, 1947 praying therein for his re-engagement with full back wages, seniority and other consequential service benefits.

2. At this stage, Shri Prateek Kumar, Ld. Counsel for the respondent has stated at bar that the industrial dispute raised from the side of the petitioner qua termination of his service without complying with the provisions of the Act. The matter stood amicably by way of amicable settlement between the parties. It is stated that the petitioner has tendered his written un-conditional apology before the respondent company. The unconditional apology tendered by the petitioner was duly accepted by the respondent management. As such the services of the petitioner were ordered to be re-engaged by the respondent. Since, the matter stood amicably settled between the parties,

hence, the matter be decided accordingly. To this effect this statement recorded separately and placed on record.

3. On the other hand, Shri J.C. Bhardwaj, AR for the petitioner *vide* his separate statement has stated that the services of the petitioner were re-engaged by the respondent company. The statement made by the Ld. Counsel for the respondent was duly read-over and explained to him. Since the services of the petitioner were re-engaged, therefore, the petitioner is not interested to proceed further.

4. Thus, keeping in view the attendant facts and circumstances of the case vis-a-vis perusal of the case record manifestly and conclusively goes to demonstrate that the Industrial Dispute raised from the side of the petitioner stood amicably resolved and the services of the petitioner were re-engaged by the respondent company. From the aforesaid statements of the parties, it is apparently established that the parties have compromised the industrial dispute arising out of application No. 140 of 2019.

5. Since, the matter stood amicably resolved and settled between the parties by way of amicable settlement, therefore, nothing survives in the present industrial dispute. **Consequently, the industrial dispute raised by the petitioner stood amicably settled and the services of the petitioner were re-engaged by the respondent company.** The reference is answered accordingly and the award is passed as per the statements of both the parties which shall form the integral part and parcel of this award. The reference is disposed off accordingly. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:
1-6-2022.

Sd/-
(RAJESH TOMER),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

**IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 15 of 2021
Instituted on : 07-01-2021
Decided on : 01-06-2022

Alam s/o Shri Sewa, r/o Village Banoe Khuda Baksh, P.O. Khedawali, Tehsil Kalka,
District Panchkula, Haryana . *Petitioner.*

VERSUS

The Managing Director, M/s Quixotic Health Care (Unit-II), Village Kalu Jhanda, P.O.
Barotiwala, Tehsil Baddi, District Solan, H.P. . *Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri Ravi Tekta, Advocate

For respondent : Shri Dheeraj Bansal, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government *vide* notification dated 11-12-2020, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

“Whether termination of the service of Alam s/o Shri Sewa r/o Village Banoe Khuda Baksh, P.O. Khedawali, Tehsil Kalka, District Panchkula, Haryana by way of closing down the gate *w.e.f.* 24-01-2020, by the Managing Director, M/s Quixotic Health care (Unit-II) Village Kalu Jhanda, P.O. Barotiwala, Tehsil Baddi, Distt. Solan, H. P., without complying the provision of the Industrial Dispute Act, 1947, as alleged by the workman, is legal and justified? If not, what relief including re-instatement, back wages, soniority, past service benefits and compensation, the above agreed workmen is entitled to from the above employer /management?”

2. On receipt of the said reference from the Appropriate Government, notices were issued to the concerned parties in pursuance to which Shri Ravi Tekta, Advocate has appeared on behalf of the petitioner whereas Shri Dheeraj Bansal, Advocate had appeared for respondent.

3. Sh. Dheeraj Bansal, Ld. Csl. for the respondent submits that after the reference has been received by this Court from the appropriate government, the matter stood amicably resolved between the parties. The petitioner has fully and finally compromised the matter as he had already received an amount of ₹ 71,730/- (₹ Seventy One Thousand Seven Hundred Thirty only) as full and final settlement amount of the claim. The settlement amount has been paid by M/s Quixotic Health Care (Unit-II) Village Kalu Jhanda, P.O. Barotiwala, Tehsil Baddi, Distt. Solan, H.P. before the Conciliation Officer. In this behalf, the petitioner also tender his resignation stated there by that he cannot continue his service with the company. He is thereby submitted his resignation which may please be accepted with immediate effect. He also requested the respondent please clear all his dues as earliest. He again submitted that the petitioner intend to withdrew his case titled as Rahul Chaudhary *Vs.* Quixotic Health Care with reference No. 57/2020 pending before this court with immediate effect and the petitioner do not want to peruse further with the said case. Along with the settlement deed (PW) with employee under section 2K of the Industrial Dispute Act, the Ld. Csl. for the respondent also placed the record. The full and final receipt (PX), copy of cheque (PY) and resignation tendered by the petitioner (PZ).

4. Sh. S.L. Gupta, Manager, H.R. M/s Quixotic Health Care (Unit-II), Village Kalu Jhanda, P.O. Barotiwala, Tehsil Baddi, District Solan, H.P. has stated at the bar that the Industrial Despute raised on behalf of the petitioner stood amicably resolved by way of an amicable settlement and as per the settlement (PW), the petitioner has been paid the full and final payment towards his claim amounting ₹71,730/- (₹ Seventy One Thousand Seven Hundred Thirty only) as full and final settlement amount of the claim which has been duly paid and received by the petitioner. He has also placed on record settlement deed (PW) with employee under section 2K of the Industrial Dispute Act, the full and final receipt (PX), copy of cheque (PY) and resignation tendered by the petitioner (PZ). Nothing survives in the present petition. To this effect his statement recorded separately.

5. On the other hand, Shri Ravi Tekta, Ld. Counsel for the petitioner has stated that the above statement was read over and explained which is acceptable to him. The matter stood amicably resolved between the parties and nothing survive in the present petition.

6. Thus, keeping in view the attendant facts and circumstances of the case vis-a-vis perusal of the case record manifestly and conclusively goes to demonstrate that the Industrial Dispute raised from the side of the petitioner stood amicably resolved and finally compromised by the petitioner and he has been paid a sum of ₹ 71,730/- (₹ Seventy One Thousand Seven Hundred Thirty only) as full and final settlement amount of the claim. Since, the petitioner has duly received his full and final payment *vide* receipt (PY), definitely, there is apparently no reason to dispute veracity. Looking into the aforesaid statement of Shri S.L. Gupta, Manager, H.R. which has been duly accepted by the Ld. Counsel for the petitioner as well as the documents, *i.e.* (PW), (PX) (PY) and (PZ) placed on record. It is apparently established that the parties have compromised the industrial dispute arising out of reference No. 15 of 2021.

7. Since, the matter stood amicably resolved and settled between the parties by way of amicable settlement, therefore, nothing survives in the present industrial dispute. **Consequently, the industrial dispute raised by the petitioner stood amicably settled to which the petitioner has been fully & finally compensated by paying ₹71,730/- (₹Seventy One Thousand Seven Hundred Thirty only).** The reference is answered accordingly and the award is passed as per the statements of both the parties as well as documentary proof placed on record *i.e.* memorandum of settlement (PW), full and final receipt (PX), copy of cheque (PY) and resignation tendered by the petitioner (PZ) shall form the integral part and parcel of this award. The reference is disposed off accordingly. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:
1-6-2022.

Sd/-
(RAJESH TOMER),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

**IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 18 of 2021
Instituted on : 07-01-2021
Decided on : 01-06-2022

Chaman Lal s/o Shri Prem Chand, r/o Village & P.O. Nanakpura, Tehsil Kalka, District
Panchkula, Haryana . . . *Petitioner.*

VERSUS

The Managing Director M/s Quixotic Health Care (Unit-II), Village Kalu Jhanda, P.O.
Barotiwala, Tehsil Baddi, District Solan, H.P. . . . *Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri Ravi Tekta, Advocate

For respondent

: Shri Dheeraj Bansal, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government *vide* notification dated 11-12-2020, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

“Whether termination of the service of Shri Chaman Lal s/o Shri Prem Chand, r/o Village & P.O. Nanakpura, Tehsil Kalka, District Panchkula, Haryana by way of closing down the gate *w.e.f.* 24-01-2020, by the Managing Director, M/s Quixotic Health Care (Unit-II) Village Kalu Jhanda, P.O. Barotiwala, Tehsil Baddi, Distt. Solan, H.P., without complying the provision of the Industrial Dispute Act 1947, as alleged by the workman, is legal and justified ? If not, what relief including re-instatement, back wages, seniority, past service benefits and compensation, the above agreed workmen is entitled to from the above employer /management?”

2. On receipt of the said reference from the Appropriate Government, notices were issued to the concerned parties in pursuance to which Shri Ravi Tekta, Advocate has appeared on behalf of the petitioner whereas Shri Dheeraj Bansal, Advocate had appeared for respondent.

3. Sh. Dheeraj Bansal, Ld. Csl. for the respondent submits that after the reference has been received by this Court from the appropriate government, the matter stood amicably resolved between the parties. The petitioner has fully and finally compromised the matter as he had already received an amount of ₹65,240/- (₹ Sixty Five Thousand Two Hundred Forty only) as full and final settlement amount of the claim. The settlement amount has been paid by M/s Quixotic Health care (Unit-II) Village Kalu Jhanda, P.O. Barotiwala, Tehsil Baddi, Distt. Solan, H.P. before the Conciliation Officer. In this behalf, the petitioner also tender his resignation stated there by that he cannot continue his service with the company. He is thereby submitted his resignation which may please be accepted with immediate effect. He also requested the respondent please clear all his dues as earliest. He again submitted that the petitioner intend to withdrew his case titled as Rahul Chaudhary *Vs.* Quixotic Health Care with reference No. 57/2020 pending before this court with immediate effect and the petitioner do not want to peruse further with the said case. Along with the settlement deed (PW) with employee under section 2K of the Industrial Dispute Act, the Ld. Csl. for the respondent also placed the record, the full and final receipt (PX), copy of cheque (PY) and resignation tendered by the petitioner (PZ).

4. Sh. S.L. Gupta, Manager, H.R. M/s Quixotic Health care (Unit-II), Village Kalu Jhanda, P.O. Barotiwala, Tehsil Baddi, District Solan, H.P. has stated at the bar that the Industrial Dispute raised on behalf of the petitioner stood amicably resolved by way of an amicable settlement and as per the settlement (PW), the petitioner has been paid the full and final payment towards his claim amounting ₹65,240/- (₹ Sixty Five Thousand Two Hundred Forty only) as full and final settlement amount of the claim which has been duly paid and received by the petitioner. He has also placed on record settlement deed (PW) with employee under section 2K of the Industrial Dispute Act, the full and final receipt (PX), copy of cheque (PY) and resignation tendered by the petitioner (PZ). Nothing survives in the present petition. To this effect his statement recorded separately.

5. On the other hand, Shri Ravi Tekta, Ld. Counsel for the petitioner has stated that the above statement was read over and explained which is acceptable to him. The matter stood amicably resolved between the parties and nothing survive in the present petition.

6. Thus, keeping in view the attendant facts and circumstances of the case vis-a-vis perusal of the case record manifestly and conclusively goes to demonstrate that the Industrial Dispute raised from the side of the petitioner stood amicably resolved and finally compromised by the petitioner and he has been paid a sum of ₹ 65,240/- (₹ Sixty Five Thousand Two Hundred Forty only) as full and final settlement amount of the claim. Since, the petitioner has duly received his full and final payment *vide* receipt (PY), definitely, there is apparently no reason to dispute veracity. Looking into the aforesaid statement of Shri S.L. Gupta, Manager, H.R. which has been duly accepted by the Ld. Counsel for the petitioner as well as the documents, *i.e.* (PW), (PX) (PY) and (PZ) placed on record. It is apparently established that the parties have compromised the industrial dispute arising out of reference No. 18 of 2021.

7. Since, the matter stood amicably resolved and settled between the parties by way of amicable settlement, therefore, nothing survives in the present industrial dispute. **Consequently, the industrial dispute raised by the petitioner stood amicably settled to which the petitioner has been fully & finally compensated by paying ₹ 65,240/- (₹ Sixty Five Thousand Two Hundred Forty only).** The reference is answered accordingly and the award is passed as per the statements of both the parties as well as documentary proof placed on record *i.e.* memorandum of settlement (PW), full and final receipt (PX), copy of cheque (PY) and resignation tendered by the petitioner (PZ) shall form the integral part and parcel of this award. The reference is disposed off accordingly. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:

1-6-2022.

Sd/-
(RAJESH TOMER),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

**IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 130 of 2021

Instituted on : 11-05-2021

Decided on : 01-06-2022

Saleem s/o Shri Atu, r/o Village Binoikhudabaroos, P.O. Kherawali, Tehsil Kalka, District Panchkula, Haryana . . . *Petitioner.*

VERSUS

The Managing Director M/s Quixotic Health Care (Unit-II), Village Kalu Jhanda, P.O. Barotiwala, Tehsil Baddi, District Solan, H.P. . . . *Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri Ravi Tekta, Advocate

For respondent

: Shri Dheeraj Bansal, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government *vide* notification dated 23-12-2020, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

“Whether termination of the service of Shri Saleem s/o Shri Atu r/o Village Binoikhudabaroos, P.O. Kherawali, Tehsil Kalka, District Panchkula, Haryana by way of closing down the gate *w.e.f.* 27-01-2020, by the Managing Director, M/s Quixotic Health Care (Unit-II), Village Kalu Jhanda, P.O. Barotiwala, Tehsil Baddi, Distt. Solan, H.P, without complying the provision of the Industrial Dispute Act 1947, as alleged by the workman, is legal and justified? If not, what relief including re-instatement, back wages, sonority, past service benefits and compensation, the above agreed workmen is entitled to from the above employer /management?”

2. On receipt of the said reference from the Appropriate Government, notices were issued to the concerned parties in pursuance to which Shri Ravi Tekta, Advocate has appeared on behalf of the petitioner whereas Shri Dheeraj Bansal, Advocate had appeared for respondent.

3. Sh. Dheeraj Bansal, Ld. Csl. for the respondent submits that after the reference has been received by this Court from the appropriate government, the matter stood amicably resolved between the parties. The petitioner has fully and finally compromised the matter as he had already received an amount of ₹ 24,500/- (₹ Twenty Four Thousand Five Hundred only) as full and final settlement amount of the claim. The settlement amount has been paid by M/s Quixotic Health care (Unit-II) Village Kalu Jhanda, P.O. Barotiwala, Tehsil Baddi, Distt. Solan, H.P. before the Conciliation Officer. In this behalf, the petitioner also tender his resignation stated there by that he cannot continue his service with the company. He is thereby submitted his resignation which may please be accepted with immediate effect. He also requested the respondent please clear all his dues as earliest. He again submitted that the petitioner intend to withdrew his case titled as Rahul Chaudhary *Vs.* Quixotic Health Care with reference No. 57/2020 pending before this court with immediate effect and the petitioner do not want to peruse further with the said case. Along with the settlement deed (PW) with employee under section 2K of the Industrial Dispute Act, the Ld. Csl. for the respondent also placed the record, the full and final receipt (PX), copy of cheque (PY) and resignation tendered by the petitioner (PZ).

4. Sh. S.L. Gupta, Manager, H.R. M/s Quixotic Health care (Unit-II) Village Kalu Jhanda, P.O. Barotiwala, Tehsil Baddi, District Solan, H.P. has stated at the bar that the Industrial Dispute raised on behalf of the petitioner stood amicably resolved by way of an amicable settlement and as per the settlement (PW), the petitioner has been paid the full and final payment towards his claim amounting ₹ 24,500/- (₹ Twenty Four Thousand Five Hundred only) as full and final settlement amount of the claim which has been duly paid and received by the petitioner. He has also placed on record settlement deed (PW) with employee under section 2K of the Industrial Dispute Act, the full and final receipt (PX), copy of cheque (PY) and resignation tendered by the petitioner (PZ). Nothing survives in the present petition. To this effect his statement recorded separately.

5. On the other hand, Shri Ravi Tekta, Ld. Counsel for the petitioner has stated that the above statement was read over and explained which is acceptable to him. The matter stood amicably resolved between the parties and nothing survive in the present petition.

6. Thus, keeping in view the attendant facts and circumstances of the case vis-a-vis perusal of the case record manifestly and conclusively goes to demonstrate that the Industrial Dispute raised from the side of the petitioner stood amicably resolved and finally compromised by the petitioner and he has been paid a sum of ₹24,500/- (₹ Twenty Four Thousand Five Hundred only) as full and final settlement amount of the claim. Since, the petitioner has duly received his full and final payment *vide* receipt (PY), definitely, there is apparently no reason to dispute veracity. Looking into the aforesaid statement of Shri S. L. Gupta, Manager, H.R. which has been duly accepted by the Ld. Counsel for the petitioner as well as the documents, *i.e.* (PW), (PX) (PY) and (PZ) placed on record. It is apparently established that the parties have compromised the industrial dispute arising out of reference No. 130 of 2021.

7. Since, the matter stood amicably resolved and settled between the parties by way of amicable settlement, therefore, nothing survives in the present industrial dispute. **Consequently, the industrial dispute raised by the petitioner stood amicably settled to which the petitioner has been fully & finally compensated by paying ₹ 24,500/- (₹ Twenty Four Thousand Five Hundred only).** The reference is answered accordingly and the award is passed as per the statements of both the parties as well as documentary proof placed on record *i.e.* memorandum of settlement (PW), full and final receipt (PX), copy of cheque (PY) and resignation tendered by the petitioner (PZ) shall form the integral part and parcel of this award. The reference is disposed off accordingly. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:
1-6-2022.

Sd/-
(RAJESH TOMER),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

**IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 133 of 2021

Instituted on : 05-05-2021

Decided on : 01-06-2022

Mohinder Singh s/o Shri Nath Ram R/o Village Shera, P.O. Mandhala, Tehsil Baddi,
District Solan, H.P. . *Petitioner.*

VERSUS

The Managing Director, M/s Quixotic Health Care (Unit-II), Village Kalu Jhanda, P.O.
Barotiwala, Tehsil Baddi, District Solan, H.P. . *Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri Ravi Tekta, Advocate

For respondent : Shri Dheeraj Bansal, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government *vide* notification dated 17-12-2020, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

“Whether termination of the service of Shri Mohinder Singh s/o Shri Nath Ram, r/o Village Shera, P.O Mandhala, Tehsil Baddi, District Solan, H.P. by way of closing down the gate *w.e.f.* 27-01-2020, by the Managing Director, M/s Quixotic Health Care (Unit-II), Village Kalu Jhanda, P.O. Barotiwala, Tehsil Baddi, Distt. Solan, H.P, without complying the provision of the Industrial Dispute Act 1947, as alleged by the workman, is legal and justified? If not, what relief including re-instatement, back wages, seniority, past service benefits and compensation, the above agreed workmen is entitled to from the above employer /management?”

2. On receipt of the said reference from the Appropriate Government, notices were issued to the concerned parties in pursuance to which Shri Ravi Tekta, Advocate has appeared on behalf of the petitioner whereas Shri Dheeraj Bansal, Advocate had appeared for respondent.

3. Sh. Dheeraj Bansal, Ld. Csl. for the respondent submits that after the reference has been received by this Court from the appropriate government, the matter stood amicably resolved between the parties. The petitioner has fully and finally compromised the matter as he had already received an amount of ₹69,770/- (₹ Sixty Nine Thousand Seven Hundred Seventy only) as full and final settlement amount of the claim. The settlement amount has been paid by M/s Quixotic Health care (Unit-II) Village Kalu Jhanda, P.O. Barotiwala, Tehsil Baddi, Distt. Solan, H.P. before the Conciliation Officer. In this behalf, the petitioner also tender his resignation stated thereby that he cannot continue his service with the company. He is thereby submitted his resignation which may please be accepted with immediate effect. He also requested the respondent please clear all his dues as earliest. He again submitted that the petitioner intend to withdrew his case titled as Rahul Chaudhary *Vs.* Quixotic Health Care with reference No. 57/2020 pending before this court with immediate effect and the petitioner do not want to peruse further with the said case. Along with the settlement deed (PW) with employee under section 2K of the Industrial Dispute Act, the Ld. Csl. for the respondent also placed the record the full and final receipt (PX), copy of cheque (PY) and resignation tendered by the petitioner (PZ).

4. Sh. S. L. Gupta, Manager, H.R. M/s Quixotic Health care (Unit-II) Village Kalu Jhanda, P.O. Barotiwala, Tehsil Baddi, District Solan, H.P. has stated at the bar that the Industrial Despute raised on behalf of the petitioner stood amicably resolved by way of an amicable settlement and as per the settlement (PW), the petitioner has been paid the full and final payment towards his claim amounting ₹69,770/- (₹ Sixty Nine Thousand Seven Hundred Seventy only) as full and final settlement amount of the claim which has been duly paid and received by the petitioner. He has also placed on record settlement deed (PW) with employee under section 2K of the Industrial Dispute Act, the full and final receipt (PX), copy of cheque (PY) and resignation tendered by the petitioner (PZ). Nothing survives in the present petition. To this effect his statement recorded separately.

5. On the other hand, Shri Ravi Tekta, Ld. Counsel for the petitioner has stated that the above statement was read over and explained which is acceptable to him. The matter stood amicably resolved between the parties and nothing survive in the present petition.

6. Thus, keeping in view the attendant facts and circumstances of the case vis-a-vis perusal of the case record manifestly and conclusively goes to demonstrates that the Industrial

Dispute raised from the side of the petitioner stood amicably resolved and finally compromised by the petitioner and he has been paid a sum of ₹69,770/- (₹ Sixty Nine Thousand Seven Hundred Seventy only) as full and final settlement amount of the claim. Since, the petitioner has duly received his full and final payment vide receipt (PY), definitely, there is apparently no reason to dispute veracity. Looking into the aforesaid statement of Shri S.L. Gupta, Manager, H.R. which has been duly accepted by the Ld. Counsel for the petitioner as well as the documents, *i.e.* (PW), (PX) (PY) and (PZ) placed on record. It is apparently established that the parties have compromised the industrial dispute arising out of reference No. 133 of 2021.

7. Since, the matter stood amicably resolved and settled between the parties by way of amicable settlement, therefore, nothing survives in the present industrial dispute. **Consequently, the industrial dispute raised by the petitioner stood amicably settled to which the petitioner has been fully & finally compensated by paying ₹ 69,770/- (₹ Sixty Nine Thousand Seven Hundred Seventy only).** The reference is answered accordingly and the award is passed as per the statements of both the parties as well as documentary proof placed on record *i.e.* memorandum of settlement (PW), full and final receipt (PX), copy of cheque (PY) and resignation tendered by the petitioner (PZ) shall form the integral part and parcel of this award. The reference is disposed off accordingly. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:
1-6-2022.

Sd/-
(RAJESH TOMER),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

**IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 134 of 2021

Instituted on : 05-05-2021

Decided on : 01-06-2022

Veer Chand s/o Shri Har Dass, r/o Village Majra Mehtab, Tehsil Kalka, District Panchkula,
Haryana . *Petitioner.*

VERSUS

The Managing Director, M/s Quixotic Health Care (Unit-II), Village Kalu Jhanda, P.O.
Barotiwala, Tehsil Baddi, District Solan, H.P. . *Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri Ravi Tekta, Advocate

For respondent

: Shri Dheeraj Bansal, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government *vide* notification dated 17-12-2020, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

“Whether termination of the service of Shri Veer Chand s/o Shri Har Dass, r/o Village Majra Mehtab, Tehsil Kalka, District Panchkula, Haryana by way of closing down the gate *w.e.f.* 24-01-2020, by the Managing Director, M/s Quixotic Health Care (Unit-II), Village Kalu Jhanda, P.O. Barotiwala, Tehsil Baddi, Distt. Solan, H.P, without complying the provision of the Industrial Dispute Act 1947, as alleged by the workman, is legal and justified? If not, what relief including re-instatement, back wages, seniority, past service benefits and compensation, the above agreed workmen is entitled to from the above employer /management?”

2. On receipt of the said reference from the Appropriate Government, notices were issued to the concerned parties in pursuance to which Shri Ravi Tekta, Advocate has appeared on behalf of the petitioner whereas Shri Dheeraj Bansal, Advocate had appeared for respondent.

3. Sh. Dheeraj Bansal, Ld. Csl. for the respondent submits that after the reference has been received by this Court from the appropriate government, the matter stood amicably resolved between the parties. The petitioner has fully and finally compromised the matter as he had already received an amount of ₹60,510/- (₹ Sixty Thousand Five Hundred Ten only) as full and final settlement amount of the claim. The settlement amount has been paid by M/s Quixotic Health care (Unit-II), Village Kalu Jhanda, P. O. Barotiwala, Tehsil Baddi, Distt. Solan, H.P. before the Conciliation Officer. In this behalf, the petitioner also tender his resignation stated there by that he cannot continue his service with the company. He is thereby submitted his resignation which may please be accepted with immediate effect. He also requested the respondent please clear all his dues as earliest. He again submitted that the petitioner intend to withdrew his case titled as Rahul Chaudhary *Vs.* Quixotic Health Care with reference No. 57/2020 pending before this court with immediate effect and the petitioner do not want to peruse further with the said case. Along with the settlement deed (PW) with employee under section 2K of the Industrial Dispute Act the, the Ld. Csl. for the respondent also placed the record, the full and final receipt (PX), copy of cheque (PY) and resignation tendered by the petitioner (PZ).

4. Sh. S. L. Gupta, Manager, H.R. M/s Quixotic Health care (Unit-II), Village Kalu Jhanda, P .O. Barotiwala, Tehsil- Baddi, District Solan, H.P. has stated at the bar that the Industrial Despute raised on behalf of the petitioner stood amicably resolved by way of an amicable settlement and as per the settlement (PW), the petitioner has been paid the full and final payment towards his claim amounting ₹60,510/- (₹ Sixty Thousand Five Hundred Ten only) as full and final settlement amount of the claim which has been duly paid and received by the petitioner. He has also placed on record settlement deed (PW) with employee under section 2K of the Industrial Dispute Act, the full and final receipt (PX), copy of cheque (PY) and resignation tendered by the petitioner (PZ). Nothing survives in the present petition. To this effect his statement recorded separately.

5. On the other hand, Shri Ravi Tekta, Ld. Counsel for the petitioner has stated that the above statement was read over and explained which is acceptable to him. The matter stood amicably resolved between the parties and nothing survive in the present petition.

6. Thus, keeping in view the attendant facts and circumstances of the case vis-a-vis perusal of the case record manifestly and conclusively goes to demonstrates that the Industrial

Dispute raised from the side of the petitioner stood amicably resolved and finally compromised by the petitioner and he has been paid a sum of ₹ 60,510/- (₹ Sixty Thousand Five Hundred Ten only) as full and final settlement amount of the claim. Since, the petitioner has duly received his full and final payment *vide* receipt (PY), definitely, there is apparently no reason to dispute veracity. Looking into the aforesaid statement of Shri S.L. Gupta, Manager, H.R which has been duly accepted by the Ld. Counsel for the petitioner as well as the documents, *i.e.* (PW), (PX) (PY) and (PZ) placed on record. It is apparently established that the parties have compromised the industrial dispute arising out of reference No. 134 of 2021.

7. Since, the matter stood amicably resolved and settled between the parties by way of amicable settlement, therefore, nothing survives in the present industrial dispute. **Consequently, the industrial dispute raised by the petitioner stood amicably settled to which the petitioner has been fully & finally compensated by paying ₹ 60,510/- (₹ Sixty Thousand Five Hundred Ten only).** The reference is answered accordingly and the award is passed as per the statements of both the parties as well as documentary proof placed on record i.e. memorandum of settlement (PW), full and final receipt (PX), copy of cheque (PY) and resignation tendered by the petitioner (PZ) shall form the integral part and parcel of this award. The reference is disposed off accordingly. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:
1-6-2022.

Sd/-
(RAJESH TOMER),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

**IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number	: 03 of 2021
Instituted on	: 07-01-2021
Decided on	: 01-06-2022

Ramesh s/o Shri Banarasi Dass r/o Village Nanakpur Khera, P.O. Nanakpur, Tehsil Kalka, District Panchkula, Haryana	. <i>Petitioner.</i>
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VERSUS

The Managing Director, M/s Quixotic Health Care (Unit-II), Village Kalu Jhanda, P.O Barotiwala, Tehsil Baddi, District Solan, H.P.	. <i>Respondent.</i>
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Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner	: Shri Ravi Tekta, Advocate
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For respondent

: Shri Dheeraj Bansal, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government *vide* notification dated 11-12-2020, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

“Whether termination of the service of Ramesh s/o Shri Banarasi Dass r/o Village Nanakpur Khera, P.O. Nanakpur, Tehsil Kalka, District Panchkula, Haryana by way of closing down the gate *w.e.f.* 24-01-2020, by the Managing Director, M/s Quixotic Health Care (Unit-II) Village Kalu Jhanda, P.O. Barotiwala, Tehsil Baddi, Distt. Solan, H.P., without complying the provision of the Industrial Dispute Act 1947, as alleged by the workman, is legal and justified? If not, what relief including re-instatement, back wages, sonority, past service benefits and compensation, the above agreed workmen is entitled to from the above employer /management?”

2. On receipt of the said reference from the Appropriate Government, notices were issued to the concerned parties in pursuance to which Shri Ravi Tekta, Advocate has appeared on behalf of the petitioner whereas Shri Dheeraj Bansal, Advocate had appeared for respondent.

3. Sh. Dheeraj Bansal, Ld. Csl. for the respondent submits that after the reference has been received by this Court from the appropriate government, the matter stood amicably resolved between the parties. The petitioner has fully and finally compromised the matter as he had already received an amount of ₹ 72,170/- (₹ Seventy Two Thousand One Hundred Seventy only) as full and final settlement amount of the claim. The settlement amount has been paid by M/s Quixotic Health care (Unit-II), Village Kalu Jhanda, P.O. Barotiwala, Tehsil Baddi, Distt. Solan, H.P. before the Conciliation Officer. In this behalf, the petitioner also tender his resignation stated thereby that he cannot continue his service with the company. He is thereby submitted his resignation which may please be accepted with immediate effect. He also requested the respondent please clear all his dues as earliest. He again submitted that the petitioner intend to withdrew his case titled as Rahul Chaudhary *Vs.* Quixotic Health Care with reference No. 57/2020 pending before this court with immediate effect and the petitioner do not want to peruse further with the said case. Along with the settlement deed (PW) with employee under section 2K of the Industrial Dispute Act, the Ld. Csl. for the respondent also placed the record, the full and final receipt (PX), copy of cheque (PY) and resignation tendered by the petitioner (PZ).

4. Sh. S. L. Gupta, Manager, H. R. M/s Quixotic Health care (Unit-II), Village Kalu Jhanda, P.O. Barotiwala, Tehsil Baddi, District Solan, H. P. has stated at the bar that the Industrial Despute raised on behalf of the petitioner stood amicably resolved by way of an amicable settlement and as per the settlement (PW), the petitioner has been paid the full and final payment towards his claim amounting ₹72,170/- (₹ Seventy Two Thousand One Hundred Seventy only) as full and final settlement amount of the claim which has been duly paid and received by the petitioner. He has also placed on record settlement deed (PW) with employee under section 2K of the Industrial Dispute Act, the full and final receipt (PX), copy of cheque (PY) and resignation tendered by the petitioner (PZ). Nothing survives in the present petition. To this effect his statement recorded separately.

5. On the other hand, Shri Ravi Tekta, Ld. Counsel for the petitioner has stated that the above statement was read over and explained which is acceptable to him. The matter stood amicably resolved between the parties and nothing survive in the present petition.

6. Thus, keeping in view the attendant facts and circumstances of the case vis-a-vis perusal of the case record manifestly and conclusively goes to demonstrate that the Industrial Dispute raised from the side of the petitioner stood amicably resolved and finally compromised by the petitioner and he has been paid a sum of ₹72,170/- (₹ Seventy Two Thousand One Hundred Seventy only) as full and final settlement amount of the claim. Since, the petitioner has duly received his full and final payment vide receipt (PY), definitely, there is apparently no reason to dispute veracity. Looking into the aforesaid statement of Shri S.L. Gupta, Manager, H.R. which has been duly accepted by the Ld. Counsel for the petitioner as well as the documents, *i.e.* (PW), (PX) (PY) and (PZ) placed on record. It is apparently established that the parties have compromised the industrial dispute arising out of reference No. 3 of 2021.

7. Since, the matter stood amicably resolved and settled between the parties by way of amicable settlement, therefore, nothing survives in the present industrial dispute. **Consequently, the industrial dispute raised by the petitioner stood amicably settled to which the petitioner has been fully & finally compensated.** The reference is answered accordingly and the award is passed as per the statements of both the parties as well as documentary proof placed on record *i.e.* memorandum of settlement (PW), full and final receipt (PX), copy of cheque (PY) and resignation tendered by the petitioner (PZ) shall form the integral part and parcel of this award. The reference is disposed off accordingly. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:

1-6-2022.

Sd/-
(RAJESH TOMER),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

**IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number	: 57 of 2020
Instituted on	: 17-03-2020
Decided on	: 01-06-2022

Rahul Chaudhory, Ramesh, Jameel Mohd. and 31 other Workers, C/o Shri Rahul s/o Shri Sadh Ram, r/o Village Kalu Jhanda, P.O. Mandhala, Tehsil Baddi, District Solan, H.P.

. Petitioner.

VERSUS

The Managing Director M/s Quixotic Health Care (Unit-II), Village Kalu Jhanda, P.O. Barotiwala, Tehsil Baddi, District Solan, H.P.

. Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner	: Shri Ravi Tekta, Advocate
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For respondent

: Shri Dheeraj Bansal, Advocate.

AWARD

The following reference petition has been, received from the Appropriate Government *vide* notification dated 9-3-2020, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

“Whether the demand raised by Shri Rahul Chaudhory, Ramesh, Jameel Mohd. and 31 other workers, C/o Shri Rahul s/o Shri Sadh Ram, r/o Village Kalu Jhanda, P.O. Mandhala, Tehsil Baddi, District Solan, H.P. before the Managing Director, M/s Quixotic Health Care (Unit-II) Village Kalu Jhanda, P.O. Barotiwala, Tehsil Baddi, Distt. Solan, H.P., *vide* demand notice dated 26-2-2020 regarding demand No (1) 25% increase in the salary per month, demand no (3) to provide dresses and shoes twice in a year and demand No. (8) to pay the bonus from the applicable financial year to till date, is maintainable, legal and justified? If yes, what amount of financial, other service benefits the above workers are entitled as per demand notice dated 26-2-2020 to from the above employer /management?”

2. On receipt of the said reference from the Appropriate Government, notices were issued to the concerned parties in pursuance to which Shri Ravi Tekta, Advocate has appeared on behalf of the petitioner whereas Shri Dheeraj Bansal, Advocate had appeared for respondent.

3. Sh. Ravi Tekta, Ld. Csl. for the petitioner submits at the bar that the petitioner has raised the industrial dispute by way of filing of demand notice before the Labour-*cum*-Conciliation Officer to which the reference was sent to this Court. Now, the matter stood amicably resolved between the parties. The petitioner who has raised the demand notice do not intend to proceed further. He prayed that the reference may kindly be disposed off accordingly. To this effect his statement recorded separately.

4. On the other hand, *vide* separate statement Shri Dheeraj Bansal, Ld. Counsel for the respondent has stated that the above statement was read over and explained which is acceptable to him. The matter stood amicably resolved between the parties and nothing survive in the present petition.

5. Since, the matter stood amicably resolved and settled between the parties by way of amicable settlement, therefore, nothing survives in the present industrial dispute. **Consequently, the industrial dispute raised by the petitioner stood amicably settled.** The reference is answered accordingly and the award is passed as per the statements of both the parties which shall form the integral part and parcel of this award. The reference is disposed off accordingly. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:
1-6-2022.

Sd/-
(RAJESH TOMER),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

**IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 10 of 2020

Instituted on : 14-2-2020

Decided on : 01-06-2022

Jagmal Singh s/o Shri Attar Singh, r/o Village Manpur Deora, Tehsil Paonta Sahib, District
Sirmaur, H.P. . *Petitioner.*

VERSUS

1. The Factory Manager M/s Akron India Pvt. Ltd., Nihalgarh, Tehsil Paonta Sahib,
District Sirmaur, H.P.

2. Bhupender Singh, Prop. M/s Royal Associates, C/o Shri Bhagat Ram near Walia Petrol
Pump, Village Bhatanwali, Tehsil Paonta Sahib, District Sirmaur, H.P. . *Respondents.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : None for the petitioner

For respondents : Shri Rahul Mahajan, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government *vide* notification dated 10-2-2020, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

“Whether termination of the service of Shri Jagmal Singh s/o Shri Attar Singh, r/o Village Manpur Deora, Tehsil Paonta Sahib, District Sirmaur, H.P. after conducting domestic enquiry *w.e.f.* 1-7-2019 by (i) Shri Bhupender Singh, Prop. M/s Royal Associates c/o Shri Bhagat Ram near Walia Petrol Pump, Village Bhatanwali, Tehsil Paonta Sahib, District Sirmaur, H.P. (contractor), (ii) The Factory Manager, M/s Akron India Pvt. Ltd., Nihalgarh, Tehsil Paonta Sahib, District Sirmaur, H.P. (Principal employer) without complying with the provision of the Industrial Dispute Act 1947, is legal and justified? If not, what relief including re-instatement, amount of back wages, past service benefits and compensation, the above ex-worker is entitled to from the above employers?”

2. On receipt of the said reference from the Appropriate Government, notices were issued to the concerned parties.

3. To the said reference an application under section 151 CPC has been filed for placing on record the letter dated 16-1-2020 addressed to the Presiding Judge, Industrial Tribunal-cum-Labour Court/settlement effected between the parties.

4. Shri Rahul Mahajan, Ld. Counsel for the respondent has stated at bar that the matter arising out of the reference No. 10 of 2020 stood amicably resolved by way of an amicable settlement. He has placed on record letter dated 16-1-2020 (PW), memorandum of settlement (PX),

compromise (PY), receipt (PZ) and copy of demand draft Mark X. He prayed that since the matter stood amicably resolved, therefore, the present matter may kindly be decided accordingly.

5. Shri K. S. Walia, Deputy General Manager for respondent company has stated at bar that the matter arising out of the reference No. 10 of 2020 stood amicably resolved by way of an amicable settlement. He has placed on record letter dated 16-1-2020 (PW), memorandum of settlement (PX), compromise (PY), receipt (PZ) and copy of demand draft Mark X. He prayed that since the matter stood amicably resolved, therefore, the present matter may kindly be decided accordingly. To this effect this statement recorded separately and placed on record.

6. Thus, keeping in view the attendant facts and circumstances of the case vis-a-vis perusal of the case record manifestly and conclusively goes to demonstrate that the Industrial Dispute raised from the side of the petitioner stood amicably resolved between the parties.

7. Since, the matter stood amicably resolved and settled between the parties by way of amicable settlement, therefore, nothing survives in the present industrial dispute. **Consequently, the industrial dispute raised by the petitioner stood amicably settled between the parties.** The reference is answered accordingly and the award is passed as per the statement of Shri K. S. Walia, Dy. General Manager for respondent company and documents *i.e.* letter dated 16-1-2020 (PW), memorandum of settlement (PX), compromise (PY), receipt (PZ) and copy of demand draft Mark X, shall form the integral part and parcel of this award. The reference is disposed off accordingly. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:
1-6-2022.

Sd/-
(RAJESH TOMER),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

**IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number	: 87 of 2017
Instituted on	: 05-06-2017
Decided on	: 03-06-2022

The President/General Secretary, Gowthami Hydro Project Workers Union, Andra Stage-II, Gushali, Tehsil Chirgaon, District Shimla, H.P. *. Petitioner.*

VERSUS

The Project Manager/Employer, M/s Gowthami Hydro, Electric Co., Pvt. Ltd., Andra Stage-II, Gushali, Tehsil Chirgaon, District Shimla, H.P. *. Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner	: Shri O.P. Chauhan, Advocate
For respondents	: Shri Rahul Mahajan, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government *vide* notification dated 22-4-2017, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

“Whether demands raised by the President/General Secretary, Gowthami Hydro Project Workers Union, Andra Stage-II, Gushali, Tehsil Chirgaon, District Shimla, H.P. *vide* demand notice dated 12-5-2016 before and to be fulfilled by The Project Manager/Employer, M/s Gowthami Hydro, Electric Co., Pvt. Ltd., Andra Stage-II, Gushali, Tehsil Chirgaon, District Shimla, H.P. are legal and justified? If yes, what monetary and other benefits, the aggrieved workmen are entitled to from the above employer/management?”

2. On receipt of the said reference from the Appropriate Government, notices were issued to the concerned parties in pursuance to which the petitioner union has filed statement of claim.

3. Shri Rahul Mahajan, Ld. Csl. for the respondents submits at bar that after the reference has been received by this Court from the appropriate government, the matter stood amicably resolved between the parties.

4. Shri KNS Prasad, Director of the company has stated at bar that the industrial dispute arising out of the reference petition No. 87 of 2017 regarding the demands raised by the President/General Secretary, Gowthami Hydro Project Workers Union, Andra Stage-II *vide* demand notice dated 12-5-2016 before and its fulfilment by the respondent company regarding the basic infrastructure demand such as drinking water, toiler facility etc. has been amicably settlement by way of amicable settlement. Nothing survive in the present petition. To this effect this statement recorded separately and placed on record.

5. On the other hand, Shri Sunil Kumar, General Secretary of the workers union *vide* separate statement has stated that the statement of Shri KNS Prasad has been read-over and explained to him which is duly accepted to him. The matter stood amicably resolved between the parties by way of amicable settlement. Nothing survives in the present petition.

6. Thus, keeping in view the attendant facts and circumstances of the case vis-a-vis perusal of the case record manifestly and conclusively goes to demonstrates that the Industrial Dispute raised from the side of the petitioner union stood amicably resolved between the parties. From the aforesaid statements of the parties, it is apparently established that the parties have compromised the industrial dispute arising out of reference No. 87 of 2017.

7. Since, the matter stood amicably resolved and settled between the parties by way of amicable settlement, therefore, nothing survives in the present industrial dispute. **Consequently, the industrial dispute raised by the petitioner union stood amicably settled between the parties.** The reference is answered accordingly and the award is passed as per the statements of both the parties, shall form the integral part and parcel of this award. The reference is disposed off accordingly. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:
3-6-2022.

Sd/-
(RAJESH TOMER),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

**IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 124 of 2018

Instituted on : 02-07-2018

Decided on : 03-06-2022

Kumari Suman d/o Shri Balwant Singh, r/o VPO Gaonsari, Tehsil Chirgaon, District Shimla, H.P. . *Petitioner.*

VERSUS

1. The Director M/s Gowthami Hydro Electric Co. Pvt. Ltd., No. 13, IV th Floor Metri Arked, 2-3-42/52, M.G Road Sikandrabad.

2. The General Manager M/s Gowthami Hydro, Electric Co., Pvt. Ltd., Andra Stage-II, Gushali, Tehsil Chirgaon, District Shimla, H.P. . *Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri O. P. Chauhan, Advocate

For respondents : Shri Rahul Mahajan, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government *vide* notification dated 5-4-2018, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

“Whether retrenchment of the service of Kumari Suman d/o Shri Balwant Singh, r/o VPO Gaonsari, Tehsil Chirgaon, District Shimla, H.P. by the Management of M/s Gowthami Hydro, Electric Co., Pvt. Ltd., Andra Stage-II, Gushali, Tehsil Chirgaon, District Shimla, H.P. *w.e.f.* 1-11-2016 without complying with the provision of the Industrial Dispute Act 1947, as alleged by the workman, is legal and justified? If not, what relief including reinstatement, seniority, amount of back wages, past service benefits and compensation, the above ex-worker is entitled to from the above employer/management?”

2. On receipt of the said reference from the Appropriate Government, notices were issued to the concerned parties in pursuance to which the petitioner has filed her statement of claim.

3. Shri Rahul Mahajan, Ld. Csl. for the respondents submits at bar that after the reference has been received by this Court from the appropriate government, the matter stood amicably resolved between the parties. The respondents have agreed to pay an amount of ₹ 1,40,000/- (₹ One Lacs Forty Thousand only) as full and final settlement amount of the claim. The settlement amount shall be paid by the respondents to the petitioner on or before 20-6-2022. The Ld. Counsel for the respondents has placed on record settlement (PX).

4. Shri KNS Prasad, Director of the company has stated at bar that the industrial dispute arising out of the reference petition No. 124 of 2018 regarding the retrenchment of the services of the petitioner by the respondent management *w.e.f.* 1-11-2016 without complying with the provisions of the Industrial Disputes Act, 1947 has been amicably settled by way of amicable settlement. The petitioner was engaged on fixed salary. The petitioner has raised the industrial dispute by way of filing the demand notice before the Labour Commissioner. As per settlement the respondents have agreed to pay full & final settlement amount to the petitioner amounting to ₹ 1,40,000/- (₹ One Lacs Forty Thousand only) towards lump sum compensation in lieu of retrenchment compensation, arrear of back wages, compensation and other benefits etc. He has placed on record the settlement deed dated 3-6-2022 (PX). As per settlement, the settlement amount shall be paid to the petitioner on or before 20-6-2022, failing which he shall be liable to pay interest @ 9% per annum. Nothing survive in the present petition. To this effect this statement recorded separately and placed on record.

5. On the other hand, Shri Sunil Kumar, General Secretary of the workers union *vide* separate statement has stated that the statement of Shri KNS Prasad has been read-over and explained to him which is duly accepted to him. The matter stood amicably resolved between the parties by way of amicable settlement in terms of settlement (PX). The full & final amount of ₹ 1,40,000/- (₹ One Lacs Forty Thousand only) shall be payable on or before 20-6-2022, failing which the respondents shall be liable to pay interest @ 9% per annum. Nothing survives in the present petition.

6. Thus, keeping in view the attendant facts and circumstances of the case vis-a-vis perusal of the case record manifestly and conclusively goes to demonstrates that the Industrial Dispute raised from the side of the petitioner stood amicably resolved and finally compromised by the petitioner and the respondent has agreed to pay a sum of ₹ 1,40,000/- (₹ One Lacs Forty Thousand only) as full and final settlement amount of the claim. From the aforesaid statements of the parties, it is apparently established that the parties have compromised the industrial dispute arising out of reference No. 124 of 2018.

7. Since, the matter stood amicably resolved and settled between the parties by way of amicable settlement, therefore, nothing survives in the present industrial dispute. **Consequently, the industrial dispute raised by the petitioner stood amicably settled to which the petitioner has been fully & finally compensated by the respondents and agreed to pay a sum of ₹ 1,40,000/- (₹ One Lacs Forty Thousand only) as lump sum compensation to the petitioner on or before 20-6-2022.** It is made clear that in case the respondents fails to make the payment of lump sum compensation to the petitioner on or before 20-6-2022, the same shall carry interest @ 9% per annum. The reference is answered accordingly and the award is passed as per the statements of both the parties and settlement deed (PX), which shall form the integral part and parcel of this award. The reference is disposed off accordingly. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:
3-6-2022.

Sd/-
(RAJESH TOMER),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

**IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 125 of 2018

Instituted on : 02-07-2018

Decided on : 03-06-2022

Raj Kumar s/o Shri Shanti Lal, r/o Village Rausi, P.O. Gaonsari, Tehsil Chirgaon, District Shimla, H.P. . .Petitioner.

VERSUS

1. The Director, M/s Gowthami Hydro Electric Co. Pvt. Ltd., No. 13, IV th Floor Metri Arked, 2-3-42/52, M.G Road Sikandrabad.

2. The General Manager M/s Gowthami Hydro, Electric Co., Pvt. Ltd., Andra Stage-II, Gushali, Tehsil Chirgaon, District Shimla, H.P. . .Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri O.P. Chauhan, Advocate

For respondents : Shri Rahul Mahajan, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government *vide* notification dated 5-4-2018, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

“Whether termination of the service of Shri Raj Kumar s/o Shri Shanti Lal, r/o Village Rausi, P.O. Gaonsari, Tehsil Chirgaon, District Shimla, H.P. by the Management of M/s Gowthami Hydro, Electric Co., Pvt. Ltd., Andra Stage-II, Gushali, Tehsil Chirgaon, District Shimla, H.P. *w.e.f.* 1-11-2016 without complying with the provision of the Industrial Dispute Act 1947, as alleged by the workman, is legal and justified? If not, what relief including re-instatement, seniority, amount of back wages, past service benefits and compensation, the above ex-worker is entitled to from the above employer/management?”

2. On receipt of the said reference from the Appropriate Government, notices were issued to the concerned parties in pursuance to which the petitioner has filed his statement of claim.

3. Shri Rahul Mahajan, Ld. Csl. for the respondents submits at bar that after the reference has been received by this Court from the appropriate government, the matter stood amicably resolved between the parties. The respondents have agreed to pay an amount of ₹ 1,40,000/- (₹ One Lacs Forty Thousand only) as full and final settlement amount of the claim. The settlement amount shall be paid by the respondents to the petitioner on or before 20-6-2022. The Ld. Counsel for the respondents has placed on record settlement (PX).

4. Shri KNS Prasad, Director of the company has stated at bar that the industrial dispute arising out of the reference petition No. 125 of 2018 regarding the retrenchment of the services of the petitioner by the respondent management *w.e.f.* 1-11-2016 without complying with the provisions of the Industrial Disputes Act, 1947 has been amicably settled by way of amicable settlement. The petitioner was engaged on fixed salary. The petitioner has raised the industrial dispute by way of filing the demand notice before the Labour Commissioner. As per settlement the respondents have agreed to pay full & final settlement amount to the petitioner amounting to ₹ 1,40,000/- (₹ One Lacs Forty Thousand only) towards lump sum compensation in lieu of retrenchment compensation, arrear of back wages, compensation and other benefits etc. he has placed on record the settlement deed dated 3-6-2022 (PX). As per settlement, the settlement amount shall be paid to the petitioner on or before 20-6-2022, failing which he shall be liable to pay interest @ 9% per annum. Nothing survive in the present petition. To this effect this statement recorded separately and placed on record.

5. On the other hand, Shri Raj Kumar (petitioner) *vide* separate statement has stated that the statement of Shri KNS Prasad has been read-over and explained to him which is duly accepted to him. The matter stood amicably resolved between the parties by way of amicable settlement in terms of settlement (PX). The full & final amount of ₹ 1,40,000/- (₹ One Lacs Forty Thousand only) shall be payable on or before 20-6-2022, failing which the respondents shall be liable to pay interest @ 9% per annum. Nothing survives in the present petition.

6. Thus, keeping in view the attendant facts and circumstances of the case vis-a-vis perusal of the case record manifestly and conclusively goes to demonstrates that the Industrial Dispute raised from the side of the petitioner stood amicably resolved and finally compromised by the petitioner and the respondent has agreed to pay a sum of ₹ 1,40,000/- (₹ One Lacs Forty Thousand only) as full and final settlement amount of the claim. From the aforesaid statements of the parties, it is apparently established that the parties have compromised the industrial dispute arising out of reference No. 125 of 2018.

7. Since, the matter stood amicably resolved and settled between the parties by way of amicable settlement, therefore, nothing survives in the present industrial dispute. **Consequently, the industrial dispute raised by the petitioner stood amicably settled to which the petitioner has been fully & finally compensated by the respondents and agreed to pay a sum of ₹ 1,40,000/- (₹ One Lacs Forty Thousand only) as lump sum compensation to the petitioner on or before 20-6-2022.** It is made clear that in case the respondents fails to make the payment of lump sum compensation to the petitioner on or before 20-6-2022, the same shall carry interest @ 9% per annum. The reference is answered accordingly and the award is passed as per the statements of both the parties and settlement deed (PX), which shall form the integral part and parcel of this award. The reference is disposed off accordingly. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:

3-6-2022.

Sd/-
(RAJESH TOMER),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

**IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 126 of 2018

Instituted on : 02-07-2018

Decided on : 03-06-2022

Trilok Kumar s/o Shri Sita Ram, r/o Village Attgaon, Tehsil Chirgaon, District Shimla, H.P.
.. *Petitioner.*

VERSUS

1. The Director, M/s Gowthami Hydro Electric Co. Pvt. Ltd., No. 13, IVth Floor Metri
Arked, 2-3-42/52, M.G Road Sikandrabad.

2. The General Manager, M/s Gowthami Hydro, Electric Co., Pvt. Ltd., Andra Stage-II,
Gushali, Tehsil Chirgaon, District Shimla, H.P. . *Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri O.P. Chauhan, Advocate

For respondents : Shri Rahul Mahajan, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government *vide* notification dated 5-4-2018, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

“Whether termination of the service of Shri Trilok Kumar s/o Shri Sita Ram, r/o Village Attgaon, Tehsil Chirgaon, District Shimla, H.P. by the Management of M/s Gowthami Hydro, Electric Co., Pvt. Ltd., Andra Stage-II, Gushali, Tehsil Chirgaon, District Shimla, H.P. *w.e.f.* 1-11-2016 without complying with the provision of the Industrial Dispute Act 1947, as alleged by the workman, is legal and justified? If not, what relief including re-instatement, seniority, amount of back wages, past service benefits and compensation, the above ex-worker is entitled to from the above employer/management?”

2. On receipt of the said reference from the Appropriate Government, notices were issued to the concerned parties in pursuance to which the petitioner has filed his statement of claim.

3. Shri Rahul Mahajan, Ld. Csl. for the respondents submits at bar that after the reference has been received by this Court from the appropriate government, the matter stood amicably resolved between the parties. The respondents have agreed to pay an amount of ₹ 1,40,000/- (₹ One Lacs Forty Thousand only) as full and final settlement amount of the claim. The settlement amount shall be paid by the respondents to the petitioner on or before 20-6-2022. The Ld. Counsel for the respondents has placed on record settlement (PX).

4. Shri KNS Prasad, Director of the company has stated at bar that the industrial dispute arising out of the reference petition No. 126 of 2018 regarding the retrenchment of the services of

the petitioner by the respondent management *w.e.f.* 1-11-2016 without complying with the provisions of the Industrial Disputes Act, 1947 has been amicably settled by way of amicable settlement. The petitioner was engaged on fixed salary. The petitioner has raised the industrial dispute by way of filing the demand notice before the Labour Commissioner. As per settlement the respondents have agreed to pay full & final settlement amount to the petitioner amounting to ₹ 1,40,000/- (₹ One Lacs Forty Thousand only) towards lump sum compensation in lieu of retrenchment compensation, arrear of back wages, compensation and other benefits etc. he has placed on record the settlement deed dated 3-6-2022 (PX). As per settlement, the settlement amount shall be paid to the petitioner on or before 20-6-2022, failing which he shall be liable to pay interest @ 9% per annum. Nothing survive in the present petition. To this effect this statement recorded separately and placed on record.

5. On the other hand, Shri Trilok (petitioner) *vide* separate statement has stated that the statement of Shri KNS Prasad has been read-over and explained to him which is duly accepted to him. The matter stood amicably resolved between the parties by way of amicable settlement in terms of settlement (PX). The full & final amount of ₹ 1,40,000/- (₹ One Lacs Forty Thousand only) shall be payable on or before 20-6-2022, failing which the respondents shall be liable to pay interest @ 9% per annum. Nothing survives in the present petition.

6. Thus, keeping in view the attendant facts and circumstances of the case vis-a-vis perusal of the case record manifestly and conclusively goes to demonstrates that the Industrial Dispute raised from the side of the petitioner stood amicably resolved and finally compromised by the petitioner and the respondent has agreed to pay a sum of ₹ 1,40,000/- (₹ One Lacs Forty Thousand only) as full and final settlement amount of the claim. From the aforesaid statements of the parties, it is apparently established that the parties have compromised the industrial dispute arising out of reference No. 126 of 2018.

7. Since, the matter stood amicably resolved and settled between the parties by way of amicable settlement, therefore, nothing survives in the present industrial dispute. **Consequently, the industrial dispute raised by the petitioner stood amicably settled to which the petitioner has been fully & finally compensated by the respondents and agreed to pay a sum of ₹ 1,40,000/- (₹ One Lacs Forty Thousand only) as lump sum compensation to the petitioner on or before 20-6-2022.** It is made clear that in case the respondents fails to make the payment of lump sum compensation to the petitioner on or before 20-6-2022, the same shall carry interest @ 9% per annum. The reference is answered accordingly and the award is passed as per the statements of both the parties and settlement deed (PX), which shall form the integral part and parcel of this award. The reference is disposed off accordingly. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:
3-6-2022.

Sd/-
(RAJESH TOMER),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

**IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 127 of 2018

Instituted on : 02-07-2018

Decided on : 03-06-2022

Narinder Kumar s/o Shri Kanwar Singh, r/o Village Dagoli, P.O. Kanthli, Tehsil Chirgaon,
District Shimla, H.P. . *Petitioner.*

VERSUS

1. The Director, M/s Gowthami Hydro Electric Co. Pvt. Ltd., No. 13, IVth Floor Metri
Arked, 2-3-42/52, M.G Road Sikandrabad.

2. The General Manager, M/s Gowthami Hydro, Electric Co., Pvt. Ltd., Andra Stage-II,
Gushali, Tehsil Chirgaon, District Shimla, H.P. . *Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri O.P Chauhan, Advocate

For respondents : Shri Rahul Mahajan, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government *vide* notification dated 5-4-2018, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

“Whether termination of the service of Shri Narinder Kumar s/o Shri Kanwar Singh, r/o Village Dagoli, P.O. Kanthli, Tehsil Chirgaon, District Shimla, H.P. by the Management of M/s Gowthami Hydro Electric Co., Pvt. Ltd., Andra Stage-II, Gushali, Tehsil Chirgaon, District Shimla, H.P. *w.e.f.* 1-11-2016 without complying with the provision of the Industrial Dispute Act 1947, as alleged by the workman, is legal and justified? If not, what relief including re-instatement, seniority, amount of back wages, past service benefits and compensation, the above ex-worker is entitled to from the above employer/management?”

2. On receipt of the said reference from the Appropriate Government, notices were issued to the concerned parties in pursuance to which the petitioner has filed his statement of claim.

3. Shri Rahul Mahajan, Ld. Csl. for the respondents submits at bar that after the reference has been received by this Court from the appropriate government, the matter stood amicably resolved between the parties. The respondents have agreed to pay an amount of ₹ 1,40,000/- (₹ One Lacs Forty Thousand only) as full and final settlement amount of the claim. The settlement amount shall be paid by the respondents to the petitioner on or before 20-6-2022. The Ld. Counsel for the respondents has placed on record settlement (PX).

4. Shri KNS Prasad, Director of the company has stated at bar that the industrial dispute arising out of the reference petition No. 127 of 2018 regarding the retrenchment of the services of the petitioner by the respondent management *w.e.f.* 1-11-2016 without complying with the provisions of the Industrial Disputes Act, 1947 has been amicably settled by way of amicable settlement. The petitioner was engaged on fixed salary. The petitioner has raised the industrial dispute by way of filing the demand notice before the Labour Commissioner. As per settlement the respondents have agreed to pay full & final settlement amount to the petitioner amounting to ₹ 1,40,000/- (₹ One Lacs Forty Thousand only) towards lump sum compensation in lieu of retrenchment compensation, arrear of back wages, compensation and other benefits etc. he has placed on record the settlement deed dated 3-6-2022 (PX). As per settlement, the settlement amount shall be paid to the petitioner on or before 20-6-2022, failing which he shall be liable to pay interest @ 9% per annum. Nothing survive in the present petition. To this effect this statement recorded separately and placed on record.

5. On the other hand, Shri Narender (petitioner) *vide* separate statement has stated that the statement of Shri KNS Prasad has been read-over and explained to him which is duly accepted to him. The matter stood amicably resolved between the parties by way of amicable settlement in terms of settlement (PX). The full & final amount of ₹ 1,40,000/- (₹ One Lacs Forty Thousand only) shall be payable on or before 20-6-2022, failing which the respondents shall be liable to pay interest @ 9% per annum. Nothing survives in the present petition.

6. Thus, keeping in view the attendant facts and circumstances of the case vis-a-vis perusal of the case record manifestly and conclusively goes to demonstrates that the Industrial Dispute raised from the side of the petitioner stood amicably resolved and finally compromised by the petitioner and the respondent has agreed to pay a sum of ₹ 1,40,000/- (₹ One Lacs Forty Thousand only) as full and final settlement amount of the claim. From the aforesaid statements of the parties, it is apparently established that the parties have compromised the industrial dispute arising out of reference No. 127 of 2018.

7. Since, the matter stood amicably resolved and settled between the parties by way of amicable settlement, therefore, nothing survives in the present industrial dispute. **Consequently, the industrial dispute raised by the petitioner stood amicably settled to which the petitioner has been fully & finally compensated by the respondents and agreed to pay a sum of ₹ 1,40,000/- (₹ One Lacs Forty Thousand only) as lump sum compensation to the petitioner on or before 20-6-2022.** It is made clear that in case the respondents fails to make the payment of lump sum compensation to the petitioner on or before 20-6-2022, the same shall carry interest @ 9% per annum. The reference is answered accordingly and the award is passed as per the statements of both the parties and settlement deed (PX), which shall form the integral part and parcel of this award. The reference is disposed off accordingly. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:
3-6-2022.

Sd/-
(RAJESH TOMER),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

**IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 149 of 2020

Instituted on : 23-7-2020

Decided on : 1-6-2022

Ghanshyma Sharma, Village Hayani, Tehsil Kandaghat, District Solan, H.P.

VERSUS

The Registrar, AP Goyal university, Shoghi Mehli Bye Pass Road Shimla, H.P.
.Respondent.

Reference under Section 10 of the Industrial Disputes Act, 1947

None for the Petitioner

None for the Respondent

AWARD

The following reference petition has been, received from the Appropriate Government *vide* notification dated 17-7-2020, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication :

“Whether termination of services of Shri Ghanshayam Sharma, Village Hayani, Tehsil Kandaghat, District Solan, H.P. by the Vice-Chancellor/Registrar AP Goyal University, Shoghi Mehli Bye Pass Road Shimla, H.P. *w.e.f.* 7-9-2019 without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what relief including re-instatement, amount of back-wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/ management?”

2. On receiving the aforesaid reference, an Industrial Dispute had arisen between the parties on account of the reference received from the appropriate government, which was duly registered with this office, as Reference Petition No. 149 of 2020 and accordingly, notices were issued to both the parties. This case is being listed for the service of the petitioner since 27-7-2020 but none had appeared.

3. The notices issued to petitioner through registered letter on the address given in reference notification itself, has been received back to this office with the remark that in Post Office Aji Valmoon there is no village in the name of Hayani as is evident from the report of alhmad dated 13-1-2022. This Court is issuing notices to the petitioner since 23-7-2020 but neither the petitioner nor any Counsel on his behalf has appeared before this Court which seems that presently he is not interested to pursue his case arising out of reference. Such being the situation, now, I have left with no other alternative but to decide the reference on the basis of material whichever is available on case file.

4. Since, non-appearance on behalf of respondent led this Court to initiate *ex-parte* proceedings against the respondent and *vide* order dated 22-3-2020, they were proceeded against *ex-parte*.

5. As per the reference, the petitioner has alleged his oral termination *w.e.f.* 7-9-2019 to be illegal and unjustified but, the petitioner has failed to appear before this Court despite having been the knowledge of the present dispute. Since, the petitioner has failed to appear before this Court and to file any claim in support thereof and to lead evidence in order to show that his services have been illegally terminated by the respondent without complying with the provisions of the Industrial Dispute Act, 1947, it appears that the petitioner is not interested to pursue his case. The petitioner has miserably failed to prove on record by leading any kind of evidence *i.e.* oral or documentary to prove or substantiate his plea of illegal termination by not filing any claim petition before this Court or putting his appearance before the Court, in order to establish that the alleged termination of the petitioner from service is in violation of mandatory provisions of the Industrial Disputes Act. Hence, the present reference petition is hereby ordered to be kept as sine-die till the day the petitioner can present in the Court and get file revived after filing appropriate application.

Ordered accordingly.

Sd/-
(RAJESH TOMER),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

**IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Application Number : 91 of 2018
Instituted on : 24-07-2018
Decided on : 08-06-2022

Narender Singh c/o Vinod Kumar, r/o Village Tipra, P.O. Surajpur, Tehsil Baddi, District Solan, H.P. . *Petitioner.*

VERSUS

Factory Manager, Ultra Tech Pharmaceuticals, Village Tipra, P.O. Surajpur, Tehsil Baddi, District Solan, H.P. . *Respondent.*

Claim petition under section 2-A of the Industrial Disputes Act, 1947

For petitioner : Shri Niranjana Verma, Advocate
For respondent : Shri R.K Khidta, Advocate

AWARD

This is an usual petition filed by the petitioner under section 2-A of the Industrial Disputes Act, 1947 qua his illegal termination by the respondent.

2. On receipt of the said petition from the petitioner, notices were issued to the respondent company and accordingly Shri R. K. Khidta, Advocate had appeared on behalf of the respondent.

3. Shri Niranjana Verma, Ld. Counsel for the respondent has stated at bar that the industrial dispute arising out of application No. 91 of 2018, regarding the demands raised by the petitioner by preferring the claim petition by holding his retrenchment to be wholly improper and unjustified. The industrial dispute raised by the petitioner stood amicably resolved by way of amicable settlement in view of memorandum of settlement (PX). He further stated that as per the settlement the respondent company is ready and willing to pay a sum of ₹ 55,000/- (₹ Fifty Five Thousand only) towards full & final payment to the petitioner which shall be payable on or before 25-6-2022. Nothing survive in the present petition. The Ld. Counsel for the respondents has placed on record settlement (PX). To this effect his statement recorded separately.

4. On the other hand, Shri Jai Parkash Singh, Manager HR (Admn.) of the respondent company *vide* his separate statement has stated that the industrial dispute arising out of application No. 91 of 2018, regarding the demands raised by the petitioner by preferring the claim petition by holding his retrenchment to be wholly improper and unjustified. The industrial dispute raised by the petitioner stood amicably resolved by way of amicable settlement in view of memorandum of settlement (PX). He further stated that as per the settlement the respondent company is ready and willing to pay a sum of ₹ 55,000/- (₹ Fifty Five Thousand only) towards full & final payment to the petitioner which shall be payable on or before 25-6-2022 failing which the respondent company shall be liable to pay the penal interest @ 9% per annum. Nothing survive in the present petition.

5. Thus, keeping in view the attendant facts and circumstances of the case vis-a-vis perusal of the case record manifestly and conclusively goes to demonstrate that the Industrial Dispute raised from the side of the petitioner stood amicably resolved and finally compromised by the petitioner and the respondent company has agreed to pay a sum of ₹ 55,000/- (₹ Fifty Five Thousand only) as full and final settlement amount of the claim. From the aforesaid statements of the parties, it is apparently established that the parties have compromised the industrial dispute arising out of Application No. 91 of 2018.

6. Since, the matter stood amicably resolved and settled between the parties by way of amicable settlement, therefore, nothing survives in the present industrial dispute. **Consequently, the industrial dispute raised by the petitioner stood amicably settled to which the petitioner has been fully & finally compensated by the respondent and agreed to pay a sum of ₹ 55,000/- (₹ Fifty Five Thousand only) as lump sum compensation to the petitioner on or before 25-6-2022.** It is made clear that in case the respondent fails to make the payment of lump sum compensation to the petitioner on or before 25-6-2022, the same shall carry interest @ 9% per annum. The award is passed accordingly as per the statements of both the parties and settlement deed (PX), shall form the integral part and parcel of this award. The petition is disposed off accordingly. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:
8-6-2022.

Sd/-
(RAJESH TOMER),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

**IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Application Number : 92 of 2018

Instituted on : 24-07-2018

Decided on : 08-06-2022

Vipin Kumar c/o Vinod Kumar r/o Village Tipra, P.O. Surajpur, Tehsil Baddi, District Solan, H.P. . .Petitioner.

VERSUS

Factory Manager, Ultra Tech Pharmaceuticals Village Tipra, P.O. Surajpur, Tehsil Baddi, District Solan, H.P. . .Respondent.

Claim petition under section 2-A of the Industrial Disputes Act, 1947

For petitioner : Shri Niranjana Verma, Advocate

For respondent : Shri R.K Khidta, Advocate

AWARD

This is an usual petition filed by the petitioner under section 2-A of the Industrial Disputes Act, 1947 qua his illegal termination by the respondent.

2. On receipt of the said petition from the petitioner, notices were issued to the respondent company and accordingly Shri R. K. Khidta, Advocate had appeared on behalf of the respondent.

3. Shri Niranjana Verma, Ld. Counsel for the respondent has stated at bar that the industrial dispute arising out of application No. 92 of 2018, regarding the demands raised by the petitioner by preferring the claim petition by holding his retrenchment to be wholly improper and unjustified. The industrial dispute raised by the petitioner stood amicably resolved by way of amicable settlement in view of memorandum of settlement (PX). He further stated that as per the settlement the respondent company is ready and willing to pay a sum of ₹ 90,000/- (₹ Ninety Thousand only) towards full & final payment to the petitioner which shall be payable on or before 25-6-2022. Nothing survive in the present petition. The Ld. Counsel for the respondents has placed on record settlement (PX). To this effect his statement recorded separately.

4. On the other hand, Shri Jai Parkash Singh, Manager HR (Admn.) of the respondent company vide his separate statement has stated that the industrial dispute arising out of application No. 92 of 2018, regarding the demands raised by the petitioner by preferring the claim petition by holding his retrenchment to be wholly improper and unjustified. The industrial dispute raised by the petitioner stood amicably resolved by way of amicable settlement in view of memorandum of settlement (PX). He further stated that as per the settlement the respondent company is ready and willing to pay a sum of ₹ 90,000/- (₹ Ninety Thousand only) towards full & final payment to the petitioner which shall be payable on or before 25-6-2022 failing which the respondent company shall be liable to pay the penal interest @ 9% per annum. Nothing survive in the present petition.

5. Thus, keeping in view the attendant facts and circumstances of the case vis-a-vis perusal of the case record manifestly and conclusively goes to demonstrate that the Industrial Dispute raised from the side of the petitioner stood amicably resolved and finally compromised by the petitioner and the respondent company has agreed to pay a sum of ₹ 90,000/- (₹ Ninety Thousand only) as full and final settlement amount of the claim. From the aforesaid statements of the parties, it is apparently established that the parties have compromised the industrial dispute arising out of Application No. 92 of 2018.

6. Since, the matter stood amicably resolved and settled between the parties by way of amicable settlement, therefore, nothing survives in the present industrial dispute. **Consequently, the industrial dispute raised by the petitioner stood amicably settled to which the petitioner has been fully & finally compensated by the respondent and agreed to pay a sum of ₹ 90,000/- (₹ Ninety Thousand only) as lump sum compensation to the petitioner on or before 25-6-2022.** It is made clear that in case the respondent fails to make the payment of lump sum compensation to the petitioner on or before 25-6-2022, the same shall carry interest @ 9% per annum. The award is passed accordingly as per the statements of both the parties and settlement deed (PX), shall form the integral part and parcel of this award. The petition is disposed off accordingly. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:
8-6-2022.

Sd/-
(RAJESH TOMER),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

**IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Application Number	: 93 of 2018
Instituted on	: 24-07-2018
Decided on	: 08-06-2022

Vipin Kishore c/o Vinod Kumar, r/o Village Tipra, P.O Surajpur, Tehsil Baddi, District Solan, H.P. . Petitioner.

VERSUS

Factory Manager, Ultra Tech Pharmaceuticals, Village Tipra, P.O. Surajpur, Tehsil Baddi, District Solan, H.P. . Respondent.

Claim petition under section 2-A of the Industrial Disputes Act, 1947

For petitioner	: Shri Niranjana Verma, Advocate
For respondent	: Shri R. K. Khidta, Advocate

AWARD

This is an usual petition filed by the petitioner under section 2-A of the Industrial Disputes Act, 1947 qua his illegal termination by the respondent.

2. On receipt of the said petition from the petitioner, notices were issued to the respondent company and accordingly Shri R. K. Khidta, Advocate had appeared on behalf of the respondent.

3. Shri Niranjana Verma, Ld. Counsel for the respondent has stated at bar that the industrial dispute arising out of application No. 93 of 2018, regarding the demands raised by the petitioner by preferring the claim petition by holding his retrenchment to be wholly improper and unjustified. The industrial dispute raised by the petitioner stood amicably resolved by way of amicable settlement in view of memorandum of settlement (PX). He further stated that as per the settlement the respondent company is ready and willing to pay a sum of ₹ 40,000/- (₹ Forty Thousand only) towards full & final payment to the petitioner which shall be payable on or before 25-6-2022. Nothing survive in the present petition. The Ld. Counsel for the respondents has placed on record settlement (PX). To this effect his statement recorded separately.

4. On the other hand, Shri Jai Parkash Singh, Manager HR (Admn.) of the respondent company *vide* his separate statement has stated that the industrial dispute arising out of application No. 93 of 2018, regarding the demands raised by the petitioner by preferring the claim petition by holding his retrenchment to be wholly improper and unjustified. The industrial dispute raised by the petitioner stood amicably resolved by way of amicable settlement in view of memorandum of settlement (PX). He further stated that as per the settlement the respondent company is ready and willing to pay a sum of ₹ 40,000/- (₹ Forty Thousand only) towards full & final payment to the petitioner which shall be payable on or before 25-6-2022 failing which the respondent company shall be liable to pay the penal interest @ 9% per annum. Nothing survive in the present petition.

5. Thus, keeping in view the attendant facts and circumstances of the case vis-a-vis perusal of the case record manifestly and conclusively goes to demonstrate that the Industrial Dispute raised from the side of the petitioner stood amicably resolved and finally compromised by the petitioner and the respondent company has agreed to pay a sum of ₹ 40,000/- (₹ Forty Thousand only) as full and final settlement amount of the claim. From the aforesaid statements of the parties, it is apparently established that the parties have compromised the industrial dispute arising out of Application No. 93 of 2018.

6. Since, the matter stood amicably resolved and settled between the parties by way of amicable settlement, therefore, nothing survives in the present industrial dispute. **Consequently, the industrial dispute raised by the petitioner stood amicably settled to which the petitioner has been fully & finally compensated by the respondent and agreed to pay a sum of ₹ 40,000/- (₹ Forty Thousand only) as lump sum compensation to the petitioner on or before 25-6-2022.** It is made clear that in case the respondent fails to make the payment of lump sum compensation to the petitioner on or before 25-6-2022, the same shall carry interest @ 9% per annum. The award is passed accordingly as per the statements of both the parties and settlement deed (PX), shall form the integral part and parcel of this award. The petition is disposed off accordingly. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:

8-6-2022.

Sd/-
(RAJESH TOMER),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

**IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Application Number : 94 of 2018

Instituted on : 24-07-2018

Decided on : 08-06-2022

Charan Dass c/o Vinod Kumar, r/o Village Tipra, P.O. Surajpur, Tehsil Baddi, District Solan, H.P. . *Petitioner.*

VERSUS

Factory Manager, Ultra Tech Pharmaceuticals, Village Tipra, P.O. Surajpur, Tehsil Baddi, District Solan, H.P. . *Respondent.*

Claim petition under section 2-A of the Industrial Disputes Act, 1947

For petitioner : Shri Niranjana Verma, Advocate

For respondent : Shri R.K Khidta, Advocate

AWARD

This is an usual petition filed by the petitioner under section 2-A of the Industrial Disputes Act, 1947 qua his illegal termination by the respondent.

2. On receipt of the said petition from the petitioner, notices were issued to the respondent company and accordingly Shri R. K. Khidta, Advocate had appeared on behalf of the respondent.

3. Shri Niranjana Verma, Ld. Counsel for the respondent has stated at bar that the industrial dispute arising out of application No. 94 of 2018, regarding the demands raised by the petitioner by preferring the claim petition by holding his retrenchment to be wholly improper and unjustified. The industrial dispute raised by the petitioner stood amicably resolved by way of amicable settlement in view of memorandum of settlement (PX). He further stated that as per the settlement the respondent company is ready and willing to pay a sum of ₹ 60,000/- (₹ Sixty Thousand only) towards full & final payment to the petitioner which shall be payable on or before 25-6-2022. Nothing survive in the present petition. The Ld. Counsel for the respondents has placed on record settlement (PX). To this effect his statement recorded separately.

4. On the other hand, Shri Jai Parkash Singh, Manager HR (Admn.) of the respondent company *vide* his separate statement has stated that the industrial dispute arising out of application No. 94 of 2018, regarding the demands raised by the petitioner by preferring the claim petition by holding his retrenchment to be wholly improper and unjustified. The industrial dispute raised by the petitioner stood amicably resolved by way of amicable settlement in view of memorandum of settlement (PX). He further stated that as per the settlement the respondent company is ready and willing to pay a sum of ₹ 60,000/- (₹ Sixty Thousand only) towards full & final payment to the petitioner which shall be payable on or before 25-6-2022 failing which the respondent company shall be liable to pay the penal interest @ 9% per annum. Nothing survive in the present petition.

5. Thus, keeping in view the attendant facts and circumstances of the case vis-a-vis perusal of the case record manifestly and conclusively goes to demonstrate that the Industrial Dispute raised from the side of the petitioner stood amicably resolved and finally compromised by the petitioner and the respondent company has agreed to pay a sum of ₹ 60,000/- (₹ Sixty Thousand only) as full and final settlement amount of the claim. From the aforesaid statements of the parties, it is apparently established that the parties have compromised the industrial dispute arising out of Application No. 94 of 2018.

6. Since, the matter stood amicably resolved and settled between the parties by way of amicable settlement, therefore, nothing survives in the present industrial dispute. **Consequently, the industrial dispute raised by the petitioner stood amicably settled to which the petitioner has been fully & finally compensated by the respondent and agreed to pay a sum of ₹ 60,000/- (₹ Sixty Thousand only) as lump sum compensation to the petitioner on or before 25-6-2022.** It is made clear that in case the respondent fails to make the payment of lump sum compensation to the petitioner on or before 25-6-2022, the same shall carry interest @ 9% per annum. The award is passed accordingly as per the statements of both the parties and settlement deed (PX), shall form the integral part and parcel of this award. The petition is disposed off accordingly. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:
8-6-2022.

Sd/-
(RAJESH TOMER),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

**IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Application Number : 95 of 2018
Instituted on : 24-07-2018
Decided on : 08-06-2022

Lucky c/o Vinod Kumar r/o Village Tipra, P.O. Surajpur, Tehsil Baddi, District Solan, H.P.
..Petitioner.

VERSUS

Factory Manager, Ultra Tech Pharmaceuticals Village Tipra, P.O. Surajpur, Tehsil Baddi,
District Solan, H.P. .Respondent.

Claim petition under section 2-A of the Industrial Disputes Act, 1947

For petitioner : Shri Niranjana Verma, Advocate
For respondent : Shri R. K. Khidta, Advocate

AWARD

This is an usual petition filed by the petitioner under section 2-A of the Industrial Disputes Act, 1947 qua his illegal termination by the respondent.

2. On receipt of the said petition from the petitioner, notices were issued to the respondent company and accordingly Shri R. K. Khidta, Advocate had appeared on behalf of the respondent.

3. Shri Niranjana Verma, Ld. Counsel for the respondent has stated at bar that the industrial dispute arising out of application No. 95 of 2018, regarding the demands raised by the petitioner by preferring the claim petition by holding his retrenchment to be wholly improper and unjustified. The industrial dispute raised by the petitioner stood amicably resolved by way of amicable settlement in view of memorandum of settlement (PX). He further stated that as per the settlement the respondent company is ready and willing to pay a sum of ₹ 40,000/- (₹ Forty Thousand only) towards full & final payment to the petitioner which shall be payable on or before 25-6-2022. Nothing survive in the present petition. The Ld. Counsel for the respondents has placed on record settlement (PX). To this effect his statement recorded separately.

4. On the other hand, Shri Jai Parkash Singh, Manager HR (Admn.) of the respondent company *vide* his separate statement has stated that the industrial dispute arising out of application No. 95 of 2018, regarding the demands raised by the petitioner by preferring the claim petition by holding his retrenchment to be wholly improper and unjustified. The industrial dispute raised by the petitioner stood amicably resolved by way of amicable settlement in view of memorandum of settlement (PX). He further stated that as per the settlement the respondent company is ready and willing to pay a sum of ₹ 40,000/- (₹ Forty Thousand only) towards full & final payment to the petitioner which shall be payable on or before 25-6-2022 failing which the respondent company shall be liable to pay the penal interest @ 9% per annum. Nothing survive in the present petition.

5. Thus, keeping in view the attendant facts and circumstances of the case vis-a-vis perusal of the case record manifestly and conclusively goes to demonstrate that the Industrial Dispute raised from the side of the petitioner stood amicably resolved and finally compromised by the petitioner and the respondent company has agreed to pay a sum of ₹ 40,000/- (₹ Forty Thousand only) as full and final settlement amount of the claim. From the aforesaid statements of the parties, it is apparently established that the parties have compromised the industrial dispute arising out of Application No. 95 of 2018.

6. Since, the matter stood amicably resolved and settled between the parties by way of amicable settlement, therefore, nothing survives in the present industrial dispute. **Consequently, the industrial dispute raised by the petitioner stood amicably settled to which the petitioner has been fully & finally compensated by the respondent and agreed to pay a sum of ₹ 40,000/- (₹ Forty Thousand only) as lump sum compensation to the petitioner on or before 25-6-2022.** It is made clear that in case the respondent fails to make the payment of lump sum compensation to the petitioner on or before 25-6-2022, the same shall carry interest @ 9% per annum. The award is passed accordingly as per the statements of both the parties and settlement deed (PX), shall form the integral part and parcel of this award. The petition is disposed off accordingly. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:
8-6-2022.

Sd/-
(RAJESH TOMER),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

**ब अदालत नायब तहसीलदार एवं सहायक समाहर्ता द्वितीय श्रेणी, नादौन,
तहसील नादौन, जिला हमीरपुर (हि0प्र0)**

मिसल नम्बर :

आगामी सुनवाई : 24-09-2022

श्री ओम प्रकाश पुत्र श्री सन्त राम, गांव किटपल, मौजा डाकघर किटपल, तहसील नादौन, जिला हमीरपुर (हि0 प्र0)

बनाम

आम जनता

विषय.—प्रार्थना-पत्र Marriage Registration u/s 7 पंजीकरण अधिनियम, 1996।

श्री ओम प्रकाश पुत्र श्री सन्त राम, गांव किटपल, मौजा डाकघर किटपल, तहसील नादौन, जिला हमीरपुर (हि0 प्र0) का आवेदन पत्र समस्त रिकार्ड व शपथ-पत्र सहित इस कार्यालय में प्राप्त हुआ है जिसमें उल्लेख है कि उनकी शादी दिनांक 13-04-2004 को गांव किटपल, तहसील नादौन, जिला हमीरपुर में हुई है। वह अपनी विवाह पंजीकरण दिनांक 13-04-2004 वासी किटपल, ग्राम पंचायत किटपल के रिकार्ड में दर्ज न करवा सका है तथा अब उक्त विवाह पंजीकरण दिनांक 13-03-2004 को समबन्धित ग्राम पंचायत किटपल में दर्ज करवाना चाहता है।

अतः इस मुस्त्री मुनादी द्वारा आम जनता को सूचित किया जाता है कि यदि किसी व्यक्ति को उपरोक्त ओम प्रकाश का विवाह पंजीकरण दिनांक 13-03-2004 को ग्राम पंचायत किटपल में दर्ज करने बारे कोई आपत्ति हो तो वह असालतन या वकालतन दिनांक 24-09-2022 को तहसील नादौन, जिला हमीरपुर को प्रातः 11 बजे उपस्थित होकर अपना उजर पेश कर सकता है। कोई भी उजर/एतराज न आने की सूरत में एकतरफा कार्यवाही अमल में लाई जाकर आगामी कार्यवाही की जाएगी एवं श्री ओम प्रकाश पुत्र श्री सन्त राम का विवाह पंजीकरण दिनांक 13-03-2004 को ग्राम पंचायत किटपल में दर्ज करने के आदेश नियमानुसार पारित कर दिए जावेंगे।

ये इशतहार मोहर अदालत व मेरे हस्ताक्षर से आज दिनांक 13-09-2022 को जारी हुआ।

मोहर।

हस्ताक्षरित /—

नायब तहसीलदार एवं सहायक समाहर्ता द्वितीय श्रेणी,
नादौन, जिला हमीरपुर (हि0 प्र0)।

**In the Court of Additional District Registrar of Marriage-cum- Sub-Divisional Magistrate,
Sub-Division Hamirpur (H.P.)**

In the matter of :

1. Sh. Ravi Sharma s/o Sh. Nathu Ram, r/o Village Jhateri, P. O. Jhaniari, Tehsil & District Hamirpur (H.P.).

2. Smt. Kiran Rani d/o Sh. Ramu, r/o Village Ravidass Nagar, Tehsil & District Hoshiarpur, Punjab-146001
.. Applicants.

Versus

General Public

Subject.— Registration of marriage under section 8 (3) of the Himachal Pradesh Registration of Marriage Act, 1996

WHEREAS, an application under section 8 (3) of the Himachal Pradesh Registration of Marriage Act, 1996 has been received from Sh. Ravi Sharma and Smt. Kiran Rani alongwith documents and affidavits stating therein that they have solemnized their marriage on dated 24-04-2022 and same could not be registered, under the act *ibid* in the office of the Local Registrar Marriage-cum-Secretary Gram Panchayat Sasan, Development Block hamirpur, District Hamirpur (H.P.) within Stipulated Period due to unavoidable circumstances.

NOW THEREFORE, the General Public is hereby informed through this notice that if any person having any objection regarding registration of this marriage, may file his/her objections personally or in writing before this court on or before 19-10-2022. In case no objection is received by 19-10-2022, it will be presumed that there is no objection to the registration of the above said marriage and the same will be registered accordingly.

Issued under my hand and seal of the court on 15-09-2022.

Seal.

Sd/-

*Additional District Registrar of,
Marriage-cum- Sub-Divisional Magistrate,
Sub-Division Hamirpur (H.P.).*

**In the Court of Additional District Registrar of Marriage-cum- Sub-Divisional Magistrate,
Sub-Division Hamirpur (H.P.)**

In the matter of :

1. Sh. Ashwani Kumar s/o Sh. Janak Raj, r/o Village Chountra, P. O. Mair, Tehsil & District Hamirpur (H.P.).

2. Smt. Anita Kumari d/o Sh. Gian Chand, r/o Village Batial, P.O. Bhambla, Tehsil Baldwara, District Mandi (H.P.) .. *Applicants.*

Versus

General Public

Subject.— Registration of marriage under section 8 (3) of the Himachal Pradesh Registration of Marriage Act, 1996

WHEREAS, an application under section 8 (3) of the Himachal Pradesh Registration of Marriage Act, 1996 has been received from Sh. Ashwani Kumar and Smt. Anita Kumari alongwith documents and affidavits stating therein that they have solemnized their marriage on dated 14-10-2021 and same could not be registered, under the act *ibid* in the office of the Marriage-cum-Secretary Gram Panchayat Pandwin, Development Block Bhoranj, District Hamirpur (H.P.) within Stipulated Period due to unavoidable circumstances.

NOW THEREFORE, the General Public is hereby informed through this notice that if any person having any objection regarding registration of this marriage, may file his/her objections

personally or in writing before this court on or before 03-10-2022. In case no objection is received by 03-10-2022, it will be presumed that there is no objection to the registration of the above said marriage and the same will be registered accordingly.

Issued under my hand and seal of the court on 05-09-2022.

Seal.

Sd/-

*Additional District Registrar of,
Marriage-cum- Sub-Divisional Magistrate,
Sub-Division Hamirpur (H.P.).*

In the Court of Sh. Shashi Pal Sharma, Sub-Divisional Magistrate Barsar, District Hamirpur (H.P.) Exercising the Powers of Marriage Officer under Special Marriage Act, 1954

1. Mr. Rohit age 26 years s/o Sh. Hans raj, r/o Village & P.O. Ghumarli, Tehsil Barsar, District Hamirpur (H.P.).

2. Ms. Muskan age 20 years d/o Sh. Anil Kumar, r/o Village Khirsi, P.O. Gehrwin, Tehsil Jhandutta, District Bilaspur (H.P.) .. *Applicants.*

Versus

General Public

Subject.— Notice of Marriage.

Mr. Rohit and Ms. Muskan have filed an application u/s 15 of the Special Marriage Act, 1954 alongwith Supporting Documents in the court of undersigned, in which they have stated that they intend to get married within three calendar months

Therefore, the general public is hereby informed through this notice that if any person having any objection regarding this marriage, may file his/her objections personally or in writing before this court on or before 04-10-2022. In case no objection is received by 04-10-2022, it will be presumed that there is no objection to the intention of the above said marriage and the same will be allowed accordingly.

Issued under my hand and seal of the court on 02-09-2022.

Seal.

Sd/-

*Marriage Officer-cum-SDM,
Sub-Division Barsar, District Hamirpur (H.P.).*

In the Court of Sh. Shashi Pal Sharma, Sub-Divisional Magistrate Barsar, District Hamirpur (H.P.) Exercising the Powers of Marriage Officer under Special Marriage Act, 1954

1. Mr. Vikky Ram age 39 years s/o Sh. Balwant Singh, r/o Village & P.O. Maharal, Tehsil Datwal at Bijhari, District Hamirpur (H.P.).

2. Ms. Raj Kumari age 23 years d/o Sh. Hukam Ram, r/o Village Bakhan, P.O. Kharga, Tehsil Nirmand, District Kullu (H.P.) .. *Applicants.*

Versus

General Public

Subject.— Notice of Marriage.

Mr. Vikky Ram and Ms. Raj Kumari have filed an application u/s 15 of the Special Marriage Act, 1954 alongwith affidavits and Supporting Documents in the court of undersigned, in which they have stated that they solemnized their marriage on dated 30-08-2022 as per Hindu Rites and customs at Sen Bhagat Mahasabha Mandir, Mehre, Tehsil Barsar, District Hamirpur (H.P.).

Therefore, the general public is hereby informed through this notice that if any person having any objection regarding this marriage, may file his/her objections personally or in writing before this court on or before 04-10-2022. In case no objection is received by 04-10-2022, it will be presumed that there is no objection to the intention of the above said marriage and the same will be registered accordingly.

Issued under my hand and seal of the court on 02-09-2022.

Seal.

Sd/-

*Marriage Officer-cum-SDM,
Sub-Division Barsar, District Hamirpur (H.P.).*

In the Court of Sh. Shashi Pal Sharma, Sub-Divisional Magistrate Barsar, District Hamirpur (H.P.) Exercising the Powers of Marriage Officer under Special Marriage Act, 1954

1. Mr. Kamal Dev age 48 years s/o Sh. Lekh Ram, r/o Village Ghori P.O. Dhabiri, Tehsil datwal at Bijhari, District Hamirpur (H.P.).

2. Ms. Rama Devi age 42 years d/o Sh. Bir Bhadur, r/o Village Ghori, P.O. Dhabiri, Tehsil Datwal at Bijhari, District Hamirpur (H.P.) .. *Applicants.*

Versus

General Public

Subject.— Notice of Marriage.

Mr. Kamal and Ms. Rama Devi have filed an application u/s 15 of the Special Marriage Act, 1954 alongwith Affidavits and Supporting Documents in the court of undersigned, in which they have stated that they solemnized their marriage on dated 03-09-2022 as per Hindu Rites and customs at Sanatan Dharam Lokhit sabha Mandir, Mehre, Tehsil Barsar, District Hamirpur (H.P.).

Therefore, the general public is hereby informed through this notice that if any person having any objection regarding this marriage, may file his/her objections personally or in writing before this court on or before 07-10-2022. In case no objection is received by 07-10-2022, it will be presumed that there is no objection to the registration of the above said marriage and the same will be registered accordingly.

Issued under my hand and seal of the court on 06-09-2022.

Seal.

Sd/-

Marriage Officer-cum-SDM,
Sub-Divisions Barsar, District Hamirpur (H.P.).

ब अदालत कार्यकारी दण्डाधिकारी, शाहपुर, जिला कांगड़ा (हि0 प्र0)

मुकद्दमा : इन्द्राज सेहत नाम।

पेशी : 15-09-2022

श्रीमती शकुन्तला देवी पुत्री श्री खैमदी, निवासी महाल नाहलन, मौजा भनाला, तहसील शाहपुर, जिला कांगड़ा, हिमाचल प्रदेश

बनाम

आम जनता

विषय.—दुरुस्ती नाम हि0 प्र0 रा0 अधिनियम, 1954 की जेर धारा 37 के तहत राजस्व रिकार्ड में नाम दुरुस्ती बारे।

उपरोक्त मुकद्दमा बारे प्रार्थिया ने इस न्यायालय में प्रार्थना-पत्र गुजारा है जिसमें लिखा है कि उसका सही नाम शकुन्तला देवी पुत्री श्री खैमदी है लेकिन शादी के बाद ससुराल पक्ष में उसका नाम सैना देवी रख दिया। उपरोक्त दोनों नाम प्रार्थिया के ही हैं। प्रार्थिया अपना नाम सैना देवी उर्फ शकुन्तला देवी पुत्री श्री खैमदी करवाना चाहती है।

अतः उक्त प्रार्थना-पत्र के सन्दर्भ में उपरोक्त नाम की दुरुस्ती बारे यदि आम जनता या अन्य किसी को कोई एतराज हो तो वह असालतन या वकालतन इस अदालत में दिनांक 15-09-2022 को दोपहर बाद 2.00 बजे हाजिर आ सकता है। हाजिर न आने की स्थिति में एकतरफा कार्यवाही अमल में लाई जाकर आगामी आदेश पारित कर दिए जाएंगे और बाद में कोई भी उजर या एतराज जेरे समायत न होगा।

आज दिनांक 18-08-2022 को मेरी मोहर व हस्ताक्षर सहित जारी हुआ।

मोहर।

हस्ताक्षरित /—
कार्यकारी दण्डाधिकारी,
शाहपुर, जिला कांगड़ा, हिमाचल प्रदेश।

ब अदालत कार्यकारी दण्डाधिकारी, शाहपुर, जिला कांगड़ा (हि0 प्र0)

मुकद्दमा : इन्द्राज मृत्यु तिथि

पेशी : 15-09-2022

राजिन्द्र प्रसाद, उम्र 67 वर्ष पुत्र श्री रत्न चन्द, निवासी गांव, डाकघर व तहसील शाहपुर, जिला कांगड़ा (हि0 प्र0)।

बनाम

आम जनता

विषय.—जन्म एवं मृत्यु पंजीकरण अधिनियम की जेर धारा 13(3) पुनरावलोकित 1969 के तहत मृत्यु प्रमाण-पत्र लेने बारे प्रार्थना-पत्र।

उपरोक्त मुकद्दमा बारे प्रार्थी ने इस न्यायालय में प्रार्थना-पत्र मय ब्यान हल्फिया गुजारा है जिसमें लिखा है कि उसकी माता श्रीमती विद्या देवी पत्नी श्री रत्न चन्द की मृत्यु तिथि नगर पंचायत शाहपुर में दर्ज करवाने हेतु एक प्रार्थना-पत्र सहायक समाहर्ता श्रेणी द्वितीय शाहपुर के न्यायालय में गुजारा है। जिसमें लिखा है मेरी माता का देहांत दिनांक 05-08-1999 को गांव शाहपुर में हुआ है लेकिन अज्ञानतावश उनकी मृत्यु तिथि सम्बंधित नगर पंचायत में दर्ज न करवा सके हैं। प्रार्थी उक्त मृत्यु तिथि को दर्ज करवाना चाहता है।

अतः इस प्रार्थना-पत्र के सन्दर्भ में यदि आम जनता या अन्य किसी को उक्त मृत्यु तिथि को नगर पंचायत शाहपुर के रिकार्ड में दर्ज करवाने बारे कोई एतराज हो तो वह असालतन या वकालतन इस अदालत में दिनांक 15-09-2022 को दोपहर बाद 2.00 बजे हाजिर आ सकता है। हाजिर न आने की स्थिति में एकतरफा कार्यवाही अमल में लाई जाकर आगामी आदेश पारित कर दिए जाएंगे और बाद में कोई भी उजर या एतराज जेरे समायत न होगा।

आज दिनांक 30-08-2022 को मेरी मोहर व हस्ताक्षर सहित जारी हुआ।

मोहर।

हस्ताक्षरित/—
कार्यकारी दण्डाधिकारी,
शाहपुर, जिला कांगड़ा, हिमाचल प्रदेश।

ब अदालत डॉ० भावना वर्मा, कार्यकारी दण्डाधिकारी, बैजनाथ, जिला कांगड़ा (हि० प्र०)

किस्म मुकद्दमा : दुरुस्ती

तारीख पेशी : 23-09-2022

श्री विशाल शर्मा पुत्र श्री चन्द्र वाहन, निवासी गांव व डा० बैजनाथ, तहसील बैजनाथ, जिला कांगड़ा (हि० प्र०)।

बनाम

आम जनता

विषय.—प्रार्थना-पत्र बराये दुरुस्ती राजस्व अभिलेख में प्रार्थी के पिता का नाम दुरुस्त करके भगवान दास पुत्र श्री लच्छमण के बजाये चन्द्र वाहन पुत्र श्री लच्छमण दास दर्ज करने बारे।

श्री विशाल शर्मा पुत्र श्री चन्द्र वाहन, निवासी गांव व डा० बैजनाथ, तहसील बैजनाथ, जिला कांगड़ा (हि० प्र०) ने अदालत हजा में प्रार्थना-पत्र गुजारा है कि उसके पिता महाल मझौरना खास, तहसील बैजनाथ में भू-स्वामी थे तथा राजस्व अभिलेख में प्रार्थी के पिता का नाम भगवान दास पुत्र श्री लच्छमण दर्ज है, जबकि प्रार्थी के पिता का असल नाम चन्द्र वाहन पुत्र श्री लच्छमण दास है। लिहाजा इसे दुरुस्त करके चन्द्र वाहन पुत्र श्री लच्छमण दास किया जावे।

अतः सर्वसाधारण को इस इश्तहार के माध्यम से सूचित किया जाता है कि यदि किसी व्यक्ति को इस बारे में कोई उजर/एतराज हो तो वह दिनांक 23-09-2022 को सुबह 10.00 बजे इस न्यायालय में असालतन या वकालतन हाजिर आकर अपने उजर/एतराज पेश कर सकता है अन्यथा प्रार्थना-पत्र में नियमानुसार उचित आदेश पारित कर दिए जाएंगे।

आज दिनांक 15-07-2022 को मेरे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

हस्ताक्षरित/—
कार्यकारी दण्डाधिकारी,
बैजनाथ, जिला कांगड़ा (हि0 प्र0)।

ब अदालत कार्यकारी दण्डाधिकारी, शाहपुर, जिला कांगड़ा, हिमाचल प्रदेश

मुकद्दमा : दुरुस्ती जाति

पेशी : 24-09-2022

श्री करनैल कुमार, सुभाष चन्द पुत्रान व श्रीमती संध्या देवी पत्नी श्री सरन दास, निवासी गांव चकबन चड़ी, डाकघर चड़ी, तहसील शाहपुर, जिला कांगड़ा, हिमाचल प्रदेश।

बनाम

आम जनता

विषय.— जाति दुरुस्ती करने बारे प्रार्थना-पत्र।

उपरोक्त मुकद्दमा बारे प्रार्थी ने इस न्यायालय में प्रार्थना-पत्र गुजारा है जिसमें लिखा है कि उसके पूर्वजों की मुताबिक शजरा नस्ब महाल करेरी, उप-तहसील दरीणी में उनकी सही जाति व गोत क्रमशः गद्दी राजपूत व वशिष्ट है, पर महाल चकबन चड़ी, तहसील शाहपुर के राजस्व अभिलेख में उसकी जाति व गोत क्रमशः राजपूत व अतर का इन्द्राज हो गया है जोकि गलत है। प्रार्थी उक्त जाति व गोत को दुरुस्त करके जाति व गोत क्रमशः गद्दी राजपूत व वशिष्ट दर्ज करवाना चाहता है।

अतः उक्त प्रार्थना-पत्र के सन्दर्भ में उपरोक्त जाति व गोत की दुरुस्ती बारे आम जनता या अन्य किसी को कोई एतराज हो तो वह असालतन या वकालतन इस अदालत में दिनांक 24-09-2022 को दोपहर बाद 2.00 बजे हाजिर आ सकता है। हाजिर न आने की स्थिति में एकतरफा कार्यवाही अमल में लाई जाकर आगामी आदेश पारित कर दिए जाएंगे और बाद में कोई भी उजर या एतराज जेरे समायत न होगा।

आज दिनांक 01-09-2022 को मेरी मोहर व हस्ताक्षर सहित जारी हुआ।

मोहर।

हस्ताक्षरित/—
कार्यकारी दण्डाधिकारी,
शाहपुर, जिला कांगड़ा, हिमाचल प्रदेश।

ब अदालत कार्यकारी दण्डाधिकारी, शाहपुर, जिला कांगड़ा (हि0 प्र0)

मुकद्दमा : इन्द्राज सेहत नाम।

पेशी : 24-09-2022

अजय राणा पुत्र औंकार सिंह, निवासी गांव व डाकघर सिहुआं, तहसील शाहपुर, जिला कांगड़ा, हिमाचल प्रदेश

बनाम

आम जनता

विषय.—दुरुस्ती नाम हि० प्र० रा० अधिनियम, 1954 की जेर धारा 37 के तहत राजस्व रिकार्ड में नाम दुरुस्ती बारे।

उपरोक्त मुकद्दमा बारे प्रार्थी ने इस न्यायालय में प्रार्थना-पत्र गुजारा है जिसमें लिखा है कि उसका सही नाम अजय राणा पुत्र श्री औंकार सिंह है। लेकिन राजस्व रिकार्ड फलगेहड़, छतरुह, सिहुं व अन्य में उसका नाम अजय सिंह पुत्र श्री औंकार सिंह दर्ज है जोकि गलत इन्द्राज हुआ है। प्रार्थी उक्त नाम को दुरुस्त करवाना चाहता है। प्रार्थी अपना नाम अजय सिंह उर्फ अजय राणा पुत्र श्री औंकार सिंह करवाना चाहता है।

अतः उक्त प्रार्थना-पत्र के सन्दर्भ में उपरोक्त नाम की दुरुस्ती बारे यदि आम जनता या अन्य किसी को कोई एतराज हो तो वह असालतन या वकालतन इस अदालत में दिनांक 24-09-2022 को दोपहर बाद 2.00 बजे हाजिर आ सकता है। हाजिर न आने की स्थिति में एकतरफा कार्यवाही अमल में लाई जाकर आगामी आदेश पारित कर दिए जाएंगे और बाद में कोई भी उजर या एतराज जेरे समायत न होगा।

आज दिनांक 01-09-2022 को मेरी मोहर व हस्ताक्षर सहित जारी हुआ।

मोहर।

हस्ताक्षरित/—
कार्यकारी दण्डाधिकारी,
शाहपुर, जिला कांगड़ा, हिमाचल प्रदेश।

ब अदालत कार्यकारी दण्डाधिकारी, शाहपुर, जिला कांगड़ा (हि० प्र०)

मुकद्दमा : इन्द्राज सेहत नाम।

पेशी : 24-09-2022

मंगत राम पुत्र श्री ख्याली राम, निवासी गांव, डाकघर व तहसील शाहपुर, जिला कांगड़ा (हि० प्र०)

बनाम

आम जनता

विषय.—दुरुस्ती नाम हि० प्र० रा० अधिनियम, 1954 की जेर धारा 37 के तहत राजस्व रिकार्ड में नाम दुरुस्ती बारे।

उपरोक्त मुकद्दमा बारे प्रार्थी ने इस न्यायालय में प्रार्थना-पत्र गुजारा है जिसमें लिखा है कि उसका सही नाम मंगत राम पुत्र श्री ख्याली है। लेकिन राजस्व रिकार्ड चन्दरुण में मांगो राम पुत्र ख्याली तथा महाल नाहलन व मझयार में मांगो पुत्र ख्याली दर्ज है जोकि गलत इन्द्राज हुआ है। प्रार्थी उक्त नाम को दुरुस्त करवाकर महाल चन्दरुण में मांगो राम उर्फ मंगत राम पुत्र श्री ख्याली व महाल नाहलन व मझयार में मांगो उर्फ मंगत राम पुत्र ख्याली करवाना चाहता है।

अतः उक्त प्रार्थना-पत्र के सन्दर्भ में उपरोक्त नाम की दुरुस्ती बारे यदि आम जनता या अन्य किसी को कोई एतराज हो तो वह असालतन या वकालतन इस अदालत में दिनांक 24-09-2022 को दोपहर बाद 2.00 बजे हाजिर आ सकता है। हाजिर न आने की स्थिति में एकतरफा कार्यवाही अमल में लाई जाकर आगामी आदेश पारित कर दिए जाएंगे और बाद में कोई भी उजर या एतराज जेरे समायत न होगा।

आज दिनांक 01-09-2022 को मेरी मोहर व हस्ताक्षर सहित जारी हुआ।

मोहर।

हस्ताक्षरित/—
कार्यकारी दण्डाधिकारी,
शाहपुर, जिला कांगड़ा, हिमाचल प्रदेश।

**ब अदालत सहायक समाहर्ता प्रथम श्रेणी एवं कार्यकारी दण्डाधिकारी, तहसील धर्मशाला,
जिला कांगड़ा (हि0प्र0)**

मुकद्दमा नं० : 42/2022

Sh. Shashi Kumar s/o Sh. Atar Singh, r/o V.P.O. Sarah, Tehsil Dharamshala, District Kangra (H.P.).

बनाम

आम जनता

विषय.—प्रार्थना-पत्र जेरे धारा 13(3) हिमाचल प्रदेश पंजीकरण अधिनियम, 1969.

Sh. Shashi Kumar s/o Sh. Atar Singh, r/o V.P.O. Sarah, Tehsil Dharamshala, District Kangra (H.P.) ने इस अदालत में शपथ-पत्र सहित मुकद्दमा दायर किया है कि उसकी/उसके Father's Sister Vidhya Devi की मृत्यु तिथि 15-10-1999 है परन्तु एम0 सी0/ग्राम पंचायत में मृत्यु पंजीकृत न है। अतः इसे पंजीकृत किये जाने के आदेश दिये जायें। इस नोटिस द्वारा समस्त जनता को तथा सम्बन्धित सम्बन्धियों को सूचित किया जाता है कि यदि किसी को उपरोक्त Vidhya Devi की मृत्यु पंजीकृत किये जाने बारे कोई एतराज हो तो वह अपना एतराज हमारी अदालत में दिनांक 02-10-2022 को असातन या वकालतन हाजिर होकर अपना एतराज पेश कर सकता है अन्यथा मुताबिक शपथ-पत्र मृत्यु तिथि पंजीकृत किये जाने बारे आदेश पारित कर दिये जायेंगे।

आज दिनांक 31-08-2022 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी किया गया।

मोहर।

हस्ताक्षरित/—
सहायक समाहर्ता प्रथम श्रेणी एवं कार्यकारी दण्डाधिकारी,
धर्मशाला, जिला कांगड़ा (हि0प्र0)।

**ब अदालत सहायक समाहर्ता प्रथम श्रेणी एवं कार्यकारी दण्डाधिकारी, तहसील धर्मशाला,
जिला कांगड़ा (हि0प्र0)**

Smt. Nilza Angmo d/o Sh. Tundop Namgyal, r/o Norbulingka, P.O. Sidhpur, Tehsil Dharamshala, District Kangra (H.P.).

बनाम

आम जनता

विषय.—प्रार्थना-पत्र जेरे धारा 13(3) हिमाचल प्रदेश पंजीकरण अधिनियम, 1969.

Smt. Nilza Angmo d/o Sh. Tundop Namgyal, r/o Norbulingka, P.O. Sidhpur, Tehsil Dharamshala, District Kangra (H.P.) ने इस अदालत में आवेदन पत्र शपथ-पत्र सहित दायर किया है कि उसके son Tenzin Konchok की जन्म तिथि 16-03-1997 है परन्तु M.C. Dharmashala/ग्राम पंचायत में जन्म तिथि पंजीकृत न है। अतः इसे पंजीकृत किये जाने के आदेश दिये जायें। इस नोटिस द्वारा समस्त जनता को तथा सम्बन्धित सम्बन्धियों को सूचित किया जाता है कि यदि किसी को उपरोक्त Tenzin

Konchok के जन्म पंजीकृत किये जाने बारे कोई उजर/एतराज हो तो वह अपना एतराज अधोहस्ताक्षरी की अदालत में दिनांक 03-10-2022 को असालतन या वकालतन हाजिर आकर पेश कर सकता है अन्यथा मुताबिक शपथ-पत्र जन्म पंजीकृत किये जाने बारे आदेश पारित कर दिये जायेंगे।

आज दिनांक 01-09-2022 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी किया गया।

मोहर।

हस्ताक्षरित/—
सहायक समाहर्ता प्रथम श्रेणी एवं कार्यकारी दण्डाधिकारी,
धर्मशाला, जिला कांगड़ा (हि0प्र0)।

ब अदालत श्री अनिल शर्मा, नायब तहसीलदार एवम् सहायक समाहर्ता द्वितीय श्रेणी भवारना,
जिला कांगड़ा (हि0 प्र0)

प्रकरण संख्या : 2022

किस्म मुकदमा : दुरुस्ती नाम

तारीख पेशी : 04-10-2022

संतोष सिंह पुत्र विजय सिंह पुत्र मोहगर, निवासी महाल गढ-बसदी, मौजा गढ, उप-तहसील भवारना,
जिला कांगड़ा (हि0 प्र0) प्रार्थीगण।

बनाम

आम जनता

प्रतिवादी।

विषय.—प्रार्थना-पत्र बराए नाम दुरुस्ती राजस्व अभिलेख महाल गुजरेहडा, मौजा डरोह, उप-तहसील भवारना,
जिला कांगड़ा (हि0 प्र0)।

प्रार्थी संतोष सिंह पुत्र विजय सिंह पुत्र मोहगर, निवासी महाल गढ-बसदी, मौजा गढ, उप-तहसील भवारना, जिला कांगड़ा (हि0 प्र0) ने एक प्रार्थना-पत्र मय शपथ-पत्र पीठासीन अधिकारी के समक्ष प्रस्तुत करते हुए अनुरोध किया है कि उसका नाम आधार कार्ड, राशन कार्ड व शैक्षणिक अभिलेख व पंचायत अभिलेख में संतोष सिंह पुत्र विजय सिंह दर्ज है व उसका विख्यात व सही नाम भी यही है परन्तु राजस्व अभिलेख महाल गुजरेहडा, मौजा, उप-तहसील भवारना में उसका नाम संतोष सिंह के बजाए संतोख सिंह दर्ज हो गया है जोकि गलत है। अतः अब प्रार्थी अपने नाम की उपरोक्त महाल के राजस्व अभिलेख में दुरुस्ती करवा करके संतोख सिंह के बजाए संतोष सिंह उपनाम संतोष सिंह पुत्र विजय सिंह दर्ज करवाना चाहता है। अतः प्रार्थी का आवेदन स्वीकार करते हुए इस इश्तहार राजपत्र, हि0प्र0 प्रकाशन के माध्यम से आम जनता को सूचित किया जाता है कि यदि किसी व्यक्ति को उक्त प्रार्थी के नाम की राजस्व अभिलेख महाल गुजरेहडा, मौजा डरोह, उप-तहसील भवारना, जिला कांगड़ा में दुरुस्ती करके संतोख सिंह के बजाए संतोष सिंह उपनाम संतोष सिंह पुत्र विजय सिंह पुत्र मोहगर दर्ज करवाने बारे किसी किस्म की आपत्ति या उजर हो तो वह दिनांक 04-10-2022 को असालतन या वकालतन हाजिर अदालत होकर अपना उजर पेश कर सकता है, बाद तारीख पेशी किसी किस्म का उजर एवं एतराज नहीं सुना जाएगा व नाम दुरुस्ती का आदेश पारित कर दिया जाएगा।

यह इश्तहार मुस्त्री मुनादी चस्पांगी आज दिनांक 24-08-2022 को मोहर अदालत व मेरे हस्ताक्षर से जारी हुआ।

मोहर।

हस्ताक्षरित/—
सहायक समाहर्ता द्वितीय श्रेणी,
भवारना, जिला कांगड़ा (हि0 प्र0)।

ब अदालत डॉ० भावना वर्मा, कार्यकारी दण्डाधिकारी बैजनाथ, जिला कांगड़ा (हि० प्र०)

किस्म मुकद्दमा : दुरुस्ती

तारीख पेशी : 04-10-2022

श्री लेख राज पुत्र श्री धनी राम, निवासी गांव व डा० धिरथौली, तहसील बैजनाथ, जिला कांगड़ा (हि० प्र०)।

बनाम

आम जनता

विषय.—प्रार्थना—पत्र बराये दुरुस्ती राजस्व अभिलेख में प्रार्थी व प्रार्थी के पिता का नाम दुरुस्त करके नेक राज पुत्र श्री धनिया पुत्र श्री मीणा के बजाये लेख राज पुत्र श्री धनी राम पुत्र श्री मीणा दर्ज करने बारे।

श्री लेख राज पुत्र श्री धनी राम, निवासी गांव व डा० धिरथौली, तहसील बैजनाथ, जिला कांगड़ा (हि० प्र०) ने अदालत हजा में प्रार्थना—पत्र गुजारा है कि वह महाल धिरथौली, मौजा व तहसील बैजनाथ में भू—स्वामी है, तथा राजस्व अभिलेख में प्रार्थी व उसके पिता का नाम नेक राज पुत्र श्री धनिया पुत्र श्री मीणा है, जबकि प्रार्थी व उसके पिता का असल नाम लेख राज पुत्र श्री धनी राम पुत्र श्री मीणा है। लिहाजा इसे दुरुस्त करके लेख राज पुत्र श्री धनी राम पुत्र श्री मीणा किया जावे।

अतः सर्वसाधारण को इस इश्तहार के माध्यम से सूचित किया जाता है कि यदि किसी व्यक्ति को इस बारे में कोई उजर/एतराज हो तो वह दिनांक 04-10-2022 को सुबह 10.00 बजे इस न्यायालय में असालतन या वकालतन हाजिर आकर अपने उजर/एतराज पेश कर सकता है अन्यथा प्रार्थना—पत्र में नियमानुसार उचित आदेश पारित कर दिए जाएंगे।

आज दिनांक 26-08-2022 को मेरे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

हस्ताक्षरित /—
कार्यकारी दण्डाधिकारी,
बैजनाथ, जिला कांगड़ा (हि० प्र०)।

ब अदालत डॉ० भावना वर्मा, कार्यकारी दण्डाधिकारी बैजनाथ, जिला कांगड़ा (हि० प्र०)

वलदेव सिंह पुत्र श्री सन्त राम, निवासी गांव व डाकघर बीड, तहसील बैजनाथ, जिला कांगड़ा (हि० प्र०)।

बनाम

आम जनता

प्रार्थना—पत्र जेर धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969.

वलदेव सिंह पुत्र श्री सन्त राम, निवासी गांव व डाकघर बीड, तहसील बैजनाथ, जिला कांगड़ा (हि० प्र०) ने इस अदालत में प्रार्थना—पत्र गुजारा है कि उसकी माता श्रीमती रूपा की मृत्यु दिनांक 10-06-1972 को महाल बीड में हुई थी, परन्तु इस बारे पंचायत के रिकार्ड में पंजीकरण नहीं करवाया जा सका। अतः अब पंजीकरण के आदेश दिये जायें।

अतः इस नोटिस के माध्यम से सर्वसाधारण को सूचित किया जाता है कि यदि किसी व्यक्ति को उपरोक्त मृत्यु के पंजीकरण बारे कोई उजर/एतराज हो तो वह दिनांक 08-10-2022 को सुबह 10.00 बजे असालतन या वकालतन हाजिर आकर पेश कर सकता है अन्यथा उपरोक्त मृत्यु के पंजीकरण बारे आदेश पारित कर दिये जायेंगे। उसके उपरान्त किसी भी प्रकार का कोई भी उजर/एतराज न सुना जायेगा।

आज दिनांक 30-08-2022 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी हुआ।

मोहर।

हस्ताक्षरित/—
कार्यकारी दण्डाधिकारी,
बैजनाथ, जिला कांगड़ा (हि0 प्र0)।

ब अदालत डॉ0 भावना वर्मा, कार्यकारी दण्डाधिकारी बैजनाथ, जिला कांगड़ा (हि0 प्र0)

मनजीत कुमार पुत्र श्री रोशन लाल, निवासी गांव व डाकघर बीड, तहसील बैजनाथ, जिला कांगड़ा (हि0 प्र0)।

बनाम

आम जनता

प्रार्थना—पत्र जेर धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969.

मनजीत कुमार पुत्र श्री रोशन लाल, निवासी गांव व डाकघर बीड, तहसील बैजनाथ, जिला कांगड़ा (हि0 प्र0) ने इस अदालत में प्रार्थना—पत्र गुजारा है कि उसकी बहन श्रीमती पवना देवी की मृत्यु दिनांक 10-05-2007 को महाल बीड में हुई थी, परन्तु इस बारे पंचायत के रिकार्ड में पंजीकरण नहीं करवाया जा सका। अतः अब पंजीकरण के आदेश दिये जायें।

अतः इस नोटिस के माध्यम से सर्वसाधारण को सूचित किया जाता है कि यदि किसी व्यक्ति को उपरोक्त मृत्यु के पंजीकरण बारे में कोई उजर/एतराज हो तो वह दिनांक 08-10-2022 को सुबह 10.00 बजे असालतन या वकालतन हाजिर आकर पेश कर सकता है अन्यथा उपरोक्त मृत्यु के पंजीकरण बारे आदेश पारित कर दिये जायेंगे। उसके उपरान्त किसी भी प्रकार का कोई भी उजर/एतराज न सुना जायेगा।

आज दिनांक 30-08-2022 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी हुआ।

मोहर।

हस्ताक्षरित/—
कार्यकारी दण्डाधिकारी,
बैजनाथ, जिला कांगड़ा (हि0 प्र0)।

**In the Court of Marriage Officer-cum-Sub Divisional Magistrate, Nagrota Bagwan,
District Kangra (H.P.)**

1. Sh. Vinay Kumar aged 30 years s/o Shri Surjeet Singh, r/o Village & P.O. Balol, Tehsil Baroh, District Kangra.

2. Madhu Bala aged 28 years d/o Sh. Surinder Kumar, r/o Village & P.O. Sunhi, Tehsil Baroh, District Kangra.

Versus

General Public

Subject.— Notice for Registration of Marriage

Applicants Sh. Vinay Kumar aged 30 years s/o Shri Surjeet Singh, r/o Village & P.O. Balol, Tehsil Baroh, District Kangra & Madhu Bala aged 28 years d/o Sh. Surinder Kumar, r/o Village & P.O. Sunhi, Tehsil Baroh, District Kangra has filed an application u/s 16 of Special Marriage Act alongwith affidavits in the court of undersigned in which they have stated that they have solemnized their marriage on 26-07-2021 at Arya Samaj Mandir Haritvihar Delhi-110084 as per Hindu rites and customs.

Therefore, the general public is hereby informed through this notice that if any person having any objection regarding this marriage, can file the objections personally or in writing before this court on or before 15-10-2022. The objection received after 15-10-2022 will not be entertained and marriage will be registered accordingly.

Issued today on 01-09-2022 under my hand and seal of the court.

Seal.

Sd/-

*Marriage Officer-cum-Sub Divisional Magistrate,
Nagrota Bagwan, District Kangra (H.P.).*

ब अदालत श्री जगदीश चन्द, तहसीलदार एवं सहायक समाहर्ता प्रथम श्रेणी,
थुरल, जिला कांगड़ा (हि0 प्र0)

किस्म मुकद्दमा : दुरुस्ती नाम

तारीख पेशी : 20-10-2022

श्री भगवान सिंह पुत्र श्री किडू, निवासी महाल कण्डी, मौजा व तहसील थुरल, जिला कांगड़ा (हि0 प्र0)
प्रार्थी।

बनाम

आम जनता

प्रतिवादी।

विषय.—प्रार्थना—पत्र दुरुस्ती नाम राजस्व अभिलेख महाल कण्डी व बलोह, मौजा व तहसील थुरल।

प्रार्थी श्री भगवान सिंह पुत्र श्री किडू, निवासी महाल कण्डी, मौजा व तहसील थुरल, जिला कांगड़ा (हि0 प्र0) ने एक प्रार्थना—पत्र मय शपथ—पत्र पीठासीन अधिकारी के समक्ष प्रस्तुत करते हुए अनुरोध किया है कि उसका नाम पंचायत अभिलेख, आधार कार्ड व सेना के दस्तावेजों में भगवान सिंह दर्ज है व उसका विख्यात व सही नाम भी भगवान सिंह ही है परन्तु राजस्व अभिलेख महाल कण्डी व बलोह, मौजा व तहसील थुरल में उसका नाम भवानी सिंह गलत दर्ज हो गया है। अतः प्रार्थी अब अपने नाम की राजस्व अभिलेख महाल कण्डी व बलोह, मौजा व तहसील थुरल में दुरुस्ती करवा करके श्री भवानी सिंह के बजाये भवानी सिंह उपनाम भगवान सिंह दर्ज करवाना चाहता है। अतः प्रार्थी का आवेदन स्वीकार करते हुए इस मुस्त्री मुन्यादी चस्पांगी व इश्तहार अखबारी के माध्यम से आम जनता को सूचित किया जाता है कि यदि किसी व्यक्ति को उक्त प्रार्थी के नाम की राजस्व अभिलेख महाल कण्डी व बलोह, मौजा व तहसील थुरल में श्री भवानी सिंह के बजाए भवानी सिंह उपनाम भगवान सिंह दर्ज करवाने बारे किसी किस्म की आपत्ति या उजर हो तो वह तारीख पेशी 20-10-2022 को असालतन या वकालतन हाजिर अदालत होकर अपना उजर पेश कर सकता है अन्यथा बाद तारीख पेशी किसी किस्म का उजर एवं एतराज नहीं सुना जावेगा व नाम दुरुस्ती का आदेश पारित कर दिया जाएगा।

यह इशतहार आज दिनांक 02-09-2022 को मोहर अदालत व मेरे हस्ताक्षर से जारी हुआ।

मोहर।

हस्ताक्षरित/—
तहसीलदार एवं सहायक समाहर्ता प्रथम श्रेणी,
थुरल, जिला कांगड़ा (हि0 प्र0)।

, ब अदालत श्री विजय कुमार शर्मा, कार्यकारी दण्डाधिकारी बैजनाथ, जिला कांगड़ा
(हि0 प्र0)

वीना देवी पुत्री श्री प्रभु पत्नी ज्ञान चन्द, निवासी नरधोड चोवू, डा0 नंगहड, तहसील बैजनाथ, जिला
कांगड़ा (हि0 प्र0)।

बनाम

आम जनता

प्रार्थना—पत्र जेर धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969.

वीना देवी पुत्री श्री प्रभु पत्नी ज्ञान चन्द, निवासी नरधोड चोवू, डा0 नंगहड, तहसील बैजनाथ, जिला
कांगड़ा (हि0 प्र0) ने इस अदालत में प्रार्थना—पत्र गुजारा है कि उसकी माता कमला देवी की मृत्यु दिनांक
15-07-1991 को महाल नरधोड चोवू में हुई थी, इस बारे पंचायत के रिकार्ड में पंजीकरण करने के आदेश
दिए जाएं।

अतः इस नोटिस के माध्यम से सर्वसाधारण को सूचित किया जाता है कि यदि किसी व्यक्ति को
उपरोक्त पंजीकरण के बारे में कोई उजर/एतराज हो तो वह दिनांक 31-10-2022 को सुबह 10.00 बजे
न्यायालय में असालतन या वकालतन हाजिर आकर पेश कर सकता है, अन्यथा उपरोक्त मृत्यु के पंजीकरण
बारे आदेश पारित कर दिए जाएंगे। उसके उपरान्त कोई एतराज न सुना जाएगा।

आज दिनांक 31-08-2022 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी हुआ।

मोहर।

हस्ताक्षरित/—
कार्यकारी दण्डाधिकारी,
बैजनाथ, जिला कांगड़ा (हि0 प्र0)।

**In the Court of Marriage Officer-cum-Sub-Divisional Magistrate, Sadar,
District Mandi (H. P.)**

In the matter of :

1. Dinesh Kumar s/o Sh. Vipin Kumar, r/o H. No. 183/10, Thanehra Muhalla, P.O.
Mandi, Tehsil Sadar, District Mandi (H.P.).

2. Anjana Kumari d/o Sh. Tej Singh, Village Kathwari, P.O. Tikkar, Tehsil Balh, District
Mandi (H.P.) . . Applicants.

Versus

General Public

Subject.—Application for the registration of Marriage under section 15 of Special Marriage Act, 1954.

Dinesh Kumar s/o Sh. Vipin Kumar, r/o H. No. 183/10, Thanehra Muhalla, P.O. Mandi, Tehsil Sadar, District Mandi (H.P.) and Anjana Kumari d/o Sh. Tej Singh, Village Kathwari, P.O. Tikkar, Tehsil Balh, District Mandi (H.P.) (at present wife of Dinesh Kumar s/o Sh. Vipin Kumar, r/o H. No. 183/10, Thanehra Muhalla, P.O. Mandi, Tehsil Sadar, District Mandi (H.P.)) have filed an application alongwith affidavits in the court of undersigned under section 15 of Special Marriage Act, 1954 that they have solemnized their marriage on 11-10-2021 according to Hindu rites and customs at their respective houses Mandi, District Mandi (H.P.) and they are living together as husband and wife since then. Hence, their marriage may be registered under Special Marriage Act, 1954.

Therefore, the general public is hereby informed through this notice that any person who has any objection regarding this marriage, can file the objection personally or in writing before this court on or before 01-10-2022 after that no objection will be entertained and marriage will be registered.

Issued today on 1st day of September, 2022 under my hand and seal of the court.

Seal.

Sd/-
RITIKA, I.A.S.,
*Marriage Officer-cum-Sub-Divisional Magistrate,
Sadar, District Mandi (H.P.).*

**In the Court of Marriage Officer-cum-Sub-Divisional Magistrate, Sadar,
District Mandi (H. P.)**

In the matter of :

1. Sh. Aman Arora s/o Sh. Ramesh Arora, r/o Jail Road, Near Sidharth Marbles, P.O. Talyahar, Tehsil Sadar, District Mandi (H.P.).

2. Smt. Swati Dhiman d/o Sh. Ramesh Kumar, r/o Ward No. 5, H. No. 241-B, Main Market, Tehsil Sadar, District Bilaspur (H.P.) . . *Applicants.*

Versus

General Public

Subject.—Application for the registration of Marriage under section 15 of Special Marriage Act, 1954.

Sh. Aman Arora s/o Sh. Ramesh Arora, r/o Jail Road, Near Sidharth Marbles, P.O. Talyahar, Tehsil Sadar, District Mandi (H.P.) and Smt. Swati Dhiman d/o Sh. Ramesh Kumar, r/o

Ward No. 5, H. No. 241-B, Main Market, Tehsil Sadar, District Bilaspur (H.P.) (at present wife of Sh. Aman Arora s/o Sh. Ramesh Arora, r/o Jail Road, Near Sidharth Marbles, P.O. Talyahar, Tehsil Sadar, District Mandi (H.P.) have filed an application alongwith affidavits in the court of undersigned under section 15 of Special Marriage Act, 1954 that they have solemnized their marriage on 19-07-2017 according to Hindu rites and customs at their respective houses Mandi, District Mandi (H.P.) and they are living together as husband and wife since then. Hence, their marriage may be registered under Special Marriage Act, 1954.

Therefore, the general public is hereby informed through this notice that any person who has any objection regarding this marriage, can file the objection personally or in writing before this court on or before 05-10-2022 after that no objection will be entertained and marriage will be registered.

Issued today on 6th day of September, 2022 under my hand and seal of the court.

Seal.

Sd/-

RITIKA, I.A.S.,

Marriage Officer-cum-Sub-Divisional Magistrate,
Sadar, District Mandi (H.P.).

समक्ष तहसीलदार एवम् सहायक समाहर्ता प्रथम श्रेणी, लडभडोल, जिला मण्डी (हि0 प्र0)

मिसल नम्बर : 91/2022

तारीख मरजुआ : 01-09-2022

तारीख पेशी : 06-10-2022

श्री महाल चन्द उपनाम हिमाल सिंह पुत्र श्री शाली उपनाम शालीग्राम पुत्र महेश, निवासी गांव जटेहड, डाकघर बाग, तहसील लडभडोल, जिला मण्डी (हि0 प्र0) प्रार्थी।

बनाम

आम जनता

फरीकदोयम।

दरखास्त बाबत नाम दुरुस्ती

उपरोक्त उनवान वाला मुकद्दमा में प्रार्थी श्री महाल चन्द उपनाम हिमाल सिंह पुत्र श्री शाली उपनाम शालीग्राम पुत्र महेश, निवासी गांव जटेहड, डाकघर बाग, तहसील लडभडोल, जिला मण्डी (हि0 प्र0) ने इस अदालत में दिनांक 31-08-2022 को प्रार्थना-पत्र प्रस्तुत करते हुए अपने प्रार्थना-पत्र में निवेदन किया है कि प्रार्थी का वास्तविक नाम महाल चन्द उपनाम हिमाल सिंह है परन्तु प्रार्थी का नाम राजस्व अभिलेख मुहाल जटेहड में महाल चन्द ही दर्ज हो चुका है जोकि गलत दर्ज हुआ है। प्रार्थी ने अपने प्रार्थना-पत्र के समर्थन में अबाहन पत्र तलबाना, नकल शजरा नस्ब, स्व0 घोषणा-पत्र, परिवार नकल भाग-1 साथ संलग्न कर रखे हैं। अब प्रार्थी ने अपने नाम की दुरुस्ती के आदेश चाहे हैं।

अतः इस इश्तहार के माध्यम से सर्वसाधारण आम जनता को सूचित किया जाता है कि किसी व्यक्ति को राजस्व अभिलेख मुहाल जटेहड में प्रार्थी का नाम महाल चन्द के स्थान पर महाल चन्द उपनाम हिमाल सिंह पुत्र शाली उपनाम शालीग्राम पुत्र महेश, निवासी गांव जटेहड डाकघर बाग, तहसील लडभडोल, जिला मण्डी (हि0 प्र0) दुरुस्ती करने बारा कोई उजर/एतराज हो तो वह असालतन या वकालतन तारीख पेशी दिनांक 06-10-2022 को 10.00 बजे प्रातः इस अदालत में हाजिर होकर अपना उजर/एतराज पेश कर सकते हैं। बसूरत गैरहाजिरी एकतरफा कार्यवाही अमल में लाई जाकर नाम दुरुस्ती दर्ज करने के आदेश पारित कर दिए जाएंगे।

यह इशतहार आज दिनांक 05-09-2022 को मेरे हस्ताक्षर व मोहर सहित अदालत से जारी हुआ।

मोहर।

हस्ताक्षरित / —
तहसीलदार एवं सहायक समाहर्ता प्रथम श्रेणी,
लडभड़ोल, जिला मण्डी (हि0 प्र0)।

समक्ष तहसीलदार एवम् सहायक समाहर्ता प्रथम श्रेणी, लडभड़ोल, जिला मण्डी (हि0 प्र0)

मिसल नम्बर : 90 / 2022

तारीख मरजुआ : 01-09-2022

तारीख पेशी : 06-10-2022

श्री बनोज कुमार पुत्र श्री जगदीश चन्द पुत्र हीरा, निवासी गांव व डाकघर गंगोटी, तहसील लडभड़ोल, जिला मण्डी (हि0 प्र0) प्रार्थी।

बनाम

आम जनता

फरीकदोयम।

दरखास्त बाबत नाम दुरुस्ती

उपरोक्त उनवान वाला मुकद्दमा में प्रार्थी श्री बनोज कुमार पुत्र श्री जगदीश चन्द पुत्र हीरा, निवासी गांव व डाकघर गंगोटी, तहसील लडभड़ोल, जिला मण्डी (हि0 प्र0) ने इस अदालत में दिनांक 27-08-2022 को प्रार्थना-पत्र प्रस्तुत करते हुए अपने प्रार्थना-पत्र में निवेदन किया है कि प्रार्थी की दादी का वास्तविक नाम द्रोपती देवी है परन्तु प्रार्थी की दादी का नाम राजस्व अभिलेख मुहाल गंगोटी में श्रीमती सरस्वती ही दर्ज हो चुका है जोकि गलत दर्ज हुआ है। प्रार्थी ने अपने प्रार्थना-पत्र के समर्थन में अबाहन पत्र तलबाना, नकल शजरा नस्ब, मृत्यु प्रमाण-पत्र साथ संलग्न कर रखे हैं। अब प्रार्थी ने अपनी दादी के नाम की दुरुस्ती के आदेश चाहे हैं।

अतः इस राजपत्र इशतहार के माध्यम से सर्वसाधारण आम जनता को सूचित किया जाता है कि किसी व्यक्ति को राजस्व अभिलेख मुहाल गंगोटी में प्रार्थी की दादी का नाम श्रीमती सरस्वती के स्थान पर श्रीमती सरस्वती उपनाम द्रोपती देवी पत्नी स्व0 श्री हीरा, निवासी गांव व डाकघर गंगोटी, तहसील लडभड़ोल, जिला मण्डी (हि0 प्र0) दुरुस्ती करने बारा कोई उजर/एतराज हो तो वह असालतन या वकालतन तारीख पेशी दिनांक 06-10-2022 को 10.00 बजे प्रातः इस अदालत में हाजिर होकर अपना उजर/एतराज पेश कर सकते हैं। बसूरत गैरहाजिरी एकतरफा कार्यवाही अमल में लाई जाकर नाम दुरुस्ती दर्ज करने के आदेश पारित कर दिए जाएंगे।

यह इशतहार आज दिनांक 05-09-2022 को मेरे हस्ताक्षर व मोहर सहित अदालत से जारी हुआ।

मोहर।

हस्ताक्षरित / —
तहसीलदार एवं सहायक समाहर्ता प्रथम श्रेणी,
लडभड़ोल, जिला मण्डी (हि0 प्र0)।

समक्ष तहसीलदार एवम् सहायक समाहर्ता प्रथम श्रेणी, लडभड़ोल, जिला मण्डी (हि0 प्र0)

मिसल नम्बर : 92 / 2022

तारीख मरजुआ : 01-09-2022

तारीख पेशी : 06-10-2022

श्री दमोदर दास पुत्र श्री श्याम सिंह पुत्र मसदी, निवासी गांव गाहरू, डाकघर रोपडी कलैहडू, तहसील लडभड़ोल, जिला मण्डी (हि0 प्र0) प्रार्थी।

बनाम

आम जनता

फरीकदोयम।

दरखास्त बाबत नाम दुरुस्ती

उपरोक्त उनवान वाला मुकद्दमा में प्रार्थी श्री दमोदर दास पुत्र श्री श्याम सिंह पुत्र मसदी, निवासी गांव गाहरू, डाकघर रोपडी कलैहडू, तहसील लडभडोल, जिला मण्डी (हि0 प्र0) ने इस अदालत में दिनांक 01-09-2022 को प्रार्थना-पत्र प्रस्तुत करते हुए अपने प्रार्थना-पत्र में निवेदन किया है कि प्रार्थी के पिता का वास्तविक नाम श्याम सिंह है परन्तु प्रार्थी के पिता का नाम राजस्व अभिलेख मुहाल गाहरू में श्यामा ही दर्ज हो चुका है जोकि गलत दर्ज हुआ है। प्रार्थी ने अपने प्रार्थना-पत्र के समर्थन में अबाहन पत्र तलबाना, नकल शजरा नस्ब, स्व घोषणा-पत्र, परिवार नकल भाग-1 व आधार कार्ड, विद्यालय त्याग का प्रमाण-पत्र साथ संलग्न कर रखे हैं। अब प्रार्थी ने अपने पिता के नाम की दुरुस्ती के आदेश चाहे हैं।

अतः इस राजपत्र इश्तहार के माध्यम से सर्वसाधारण आम जनता को सूचित किया जाता है कि किसी व्यक्ति को राजस्व अभिलेख मुहाल गाहरू में प्रार्थी के पिता का नाम श्यामा के स्थान पर श्याम सिंह पुत्र मसदी, निवासी गांव गाहरू, डाकघर रोपडी कलैहडू, तहसील लडभडोल, जिला मण्डी (हि0 प्र0) दुरुस्ती करने बारा कोई उजर/एतराज हो तो वह असालतन या वकालतन तारीख पेशी दिनांक 06-10-2022 को 10.00 बजे प्रातः इस अदालत में हाजिर होकर अपना उजर/एतराज पेश कर सकते हैं। बसूरत गैरहाजिरी एकतरफा कार्यवाही अमल में लाई जाकर नाम दुरुस्ती दर्ज करने के आदेश पारित कर दिए जाएंगे।

यह इश्तहार आज दिनांक 06-09-2022 को मेरे हस्ताक्षर व मोहर सहित अदालत से जारी हुआ।

मोहर।

हस्ताक्षरित /—
तहसीलदार एवं सहायक समाहर्ता प्रथम श्रेणी,
लडभडोल, जिला मण्डी (हि0 प्र0)।

समक्ष तहसीलदार एवम् सहायक समाहर्ता प्रथम श्रेणी, लडभडोल, जिला मण्डी (हि0 प्र0)

मिसल नम्बर : 93 / 2022

तारीख मरजुआ : 01-09-2022

तारीख पेशी : 06-10-2022

श्री बलजीत सिंह पुत्र श्री माधो सिंह पुत्र भादर सिंह, निवासी गांव मनौला, डाकघर बल्ह क्वार, तहसील लडभडोल, जिला मण्डी (हि0 प्र0) प्रार्थी।

बनाम

आम जनता

फरीकदोयम।

दरखास्त बाबत नाम दुरुस्ती

उपरोक्त उनवान वाला मुकद्दमा में प्रार्थी श्री बलजीत सिंह पुत्र श्री माधो सिंह पुत्र भादर सिंह, निवासी गांव मनौला, डाकघर बल्ह क्वार, तहसील लडभडोल, जिला मण्डी (हि0 प्र0) ने इस अदालत में दिनांक 02-09-2022 को प्रार्थना-पत्र प्रस्तुत करते हुए अपने प्रार्थना-पत्र में निवेदन किया है कि प्रार्थी का वास्तविक नाम बलजीत सिंह है परन्तु प्रार्थी का नाम राजस्व अभिलेख मुहाल मनौला में बलजीत कुमार ही दर्ज हो चुका है जोकि गलत दर्ज हुआ है। प्रार्थी ने अपने प्रार्थना-पत्र के समर्थन में अबाहन पत्र तलबाना, नकल शजरा नस्ब, स्व घोषणा-पत्र, परिवार नकल भाग-1 व आधार कार्ड, शिक्षा प्रमाण-पत्र साथ संलग्न कर रखे हैं। अब प्रार्थी ने अपने नाम की दुरुस्ती के आदेश चाहे हैं।

अतः इस राजपत्र इश्तहार के माध्यम से सर्वसाधारण आम जनता को सूचित किया जाता है कि किसी व्यक्ति को राजस्व अभिलेख मुहाल मनौला में प्रार्थी का नाम बलजीत कुमार के स्थान पर बलजीत सिंह पुत्र माधो सिंह पुत्र भादर सिंह, निवासी गांव मनौला, डाकघर बल्ह क्वार, तहसील लडभड़ोल, जिला मण्डी (हि0 प्र0) दुरुस्ती करने बारा कोई उजर/एतराज हो तो वह असालतन या वकालतन तारीख पेशी दिनांक 06-10-2022 को 10.00 बजे प्रातः इस अदालत में हाजिर होकर अपना उजर/एतराज पेश कर सकते हैं। बसूरत गैरहाजिरी एकतरफा कार्यवाही अमल में लाई जाकर नाम दुरुस्ती दर्ज करने के आदेश पारित कर दिए जाएंगे।

यह इश्तहार आज दिनांक 06-09-2022 को मेरे हस्ताक्षर व मोहर सहित अदालत से जारी हुआ।

मोहर।

हस्ताक्षरित/—
तहसीलदार एवं सहायक समाहर्ता प्रथम श्रेणी,
लडभड़ोल, जिला मण्डी (हि0प्र0)।

**ब अदालत नायब तहसीलदार एवं सहायक समाहर्ता द्वितीय श्रेणी, तहसील सन्धोल,
जिला मण्डी (हि0 प्र0)**

मिसल नाम दुरुस्ती नं0 14

तारीख दायर : 1-09-2022

तारीख पेशी : 12-10-2022

श्री रणजीत सिंह पुत्र स्व0 श्री अच्छर सिंह, निवासी गांव दयोल, डाकघर टौरखोला, तहसील सन्धोल, जिला मण्डी (हि0 प्र0) प्रार्थी।

बनाम

आम जनता

प्रत्यार्थी।

अधीन धारा 37(2) भू-राजस्व अधिनियम, 1954 के तहत आवेदन-पत्र।

श्री रणजीत सिंह पुत्र स्व0 श्री अच्छर सिंह, निवासी गांव दयोल, डाकघर टौरखोला, तहसील सन्धोल, जिला मण्डी (हि0 प्र0) द्वारा प्रस्तुत आवेदन-पत्र में उल्लेख किया है कि उसके स्वर्गीय दादा का वास्तविक नाम लौहका है जबकि राजस्व अभिलेख मुहाल दयोल में उसके दादा का नाम लौहकू दर्ज है जोकि गलत है। इसलिए प्रार्थी ने निवेदन किया है कि राजस्व अभिलेख मुहाल दयोल में दुरुस्ती की जाकर उसके दादा का नाम लौहकू उर्फ लौहका दर्ज किया जाए।

अतः इससे पूर्व कि मामला में अधीन धारा 37(2) भू-राजस्व अधिनियम, 1954 के तहत आगामी आवश्यक कार्रवाई अमल में लाई जाए, इस नोटिस द्वारा जनसाधारण को सूचित किया जाता है कि यदि किसी को उपरोक्त मामला में कोई उजर/एतराज हो तो वह इस न्यायालय में दिनांक 12-10-2022 को प्रातः 10.00 बजे असालतन या वकालतन हाजिर आकर अपना उजर/एतराज पेश कर सकता है अन्यथा गैरहाजिरी की सूरत में एकतरफा कार्यवाही अमल में लाई जाएगी एवं प्रार्थी के आवेदन-पत्र का नियमानुसार निपटारा कर दिया जाएगा।

आज दिनांक 12 सितम्बर, 2022 को हमारे हस्ताक्षर व मोहर अदालत द्वारा जारी किया गया।

मोहर।

हस्ताक्षरित/—
नायब तहसीलदार एवं सहायक समाहर्ता द्वितीय श्रेणी,
तहसील सन्धोल, जिला मण्डी (हि0 प्र0)।

**ब अदालत नायब तहसीलदार एवं सहायक समाहर्ता द्वितीय श्रेणी, तहसील सन्धोल,
जिला मण्डी (हि0 प्र0)**

मिसल नाम दुरुस्ती नं0 15

तारीख दायर : 01-09-2022

तारीख पेशी : 12-10-2022

श्री रणजीत सिंह पुत्र स्व0 श्री अच्छर सिंह, निवासी गांव दयोल, डाकघर टौरखोला, तहसील सन्धोल,
जिला मण्डी (हि0 प्र0) प्रार्थी।

बनाम

आम जनता

प्रत्यार्थी।

अधीन धारा 37(2) भू-राजस्व अधिनियम, 1954 के तहत आवेदन-पत्र।

श्री रणजीत सिंह पुत्र स्व0 श्री अच्छर सिंह, निवासी गांव दयोल, डाकघर टौरखोला, तहसील सन्धोल, जिला मण्डी (हि0 प्र0) द्वारा प्रस्तुत आवेदन-पत्र में उल्लेख किया है कि उसके स्वर्गीय पिता का वास्तविक नाम अच्छर सिंह है जबकि राजस्व अभिलेख मुहाल लसराणा, दतवाड़ व कच्छाहली में उसके पिता का नाम अच्छरू दर्ज है जोकि गलत है। इसलिए प्रार्थी ने निवेदन किया है कि राजस्व अभिलेख मुहाल लसराणा, दतवाड़ व कच्छाहली में दुरुस्ती की जाकर उसके पिता का नाम अच्छरू उर्फ अच्छर सिंह दर्ज किया जाए।

अतः इससे पूर्व कि मामला में अधीन धारा 37(2) भू-राजस्व अधिनियम, 1954 के तहत आगामी आवश्यक कार्रवाई अमल में लाई जाए, इस नोटिस द्वारा जनसाधारण को सूचित किया जाता है कि यदि किसी को उपरोक्त मामला में कोई उजर/एतराज हो तो वह इस न्यायालय में दिनांक 12-10-2022 को प्रातः 10.00 बजे असातन या वकालतन हाजिर आकर अपना उजर/एतराज पेश कर सकता है अन्यथा गैरहाजिरी की सूरत में एकतरफा कार्यवाही अमल में लाई जाएगी एवं प्रार्थी के आवेदन-पत्र का नियमानुसार निपटारा कर दिया जाएगा।

आज दिनांक 12 सितम्बर, 2022 को हमारे हस्ताक्षर व मोहर अदालत द्वारा जारी किया गया।

मोहर।

हस्ताक्षरित/-,
नायब तहसीलदार एवं सहायक समाहर्ता द्वितीय श्रेणी,
तहसील सन्धोल, जिला मण्डी (हि0 प्र0)।

**ब अदालत नायब तहसीलदार एवं सहायक समाहर्ता द्वितीय श्रेणी, तहसील सन्धोल,
जिला मण्डी (हि0 प्र0)**

मिसल नाम दुरुस्ती नं0 16

तारीख दायर : 01-09-2022

तारीख पेशी : 12-10-2022

श्रीमती शारदा देवी पुत्री श्री धर्मू उपनाम सौजू, निवासी गांव व डाकघर धलारा, तहसील सन्धोल,
जिला मण्डी (हि0 प्र0) प्रार्थिया।

बनाम

आम जनता

प्रत्यार्थी।

अधीन धारा 37(2) भू-राजस्व अधिनियम, 1954 के तहत आवेदन-पत्र।

श्रीमती शारदा देवी पुत्री श्री धर्मू उपनाम सौजू निवासी गांव व डाकघर धलारा, तहसील सन्धोल, जिला मण्डी (हि० प्र०) द्वारा प्रस्तुत आवेदन-पत्र में उल्लेख किया है कि उसका वास्तविक नाम शारदा देवी है जबकि राजस्व अभिलेख मुहाल धलारा में उसका नाम रोशनी दर्ज है जोकि गलत है। इसलिए प्रार्थिया ने निवेदन किया है कि राजस्व अभिलेख मुहाल धलारा में दुरुस्ती की जाकर उसका नाम रोशनी उर्फ शारदा देवी दर्ज किया जाए।

अतः इससे पूर्व कि मामला में अधीन धारा 37(2) भू-राजस्व अधिनियम, 1954 के तहत आगामी आवश्यक कार्रवाई अमल में लाई जाए, इस नोटिस द्वारा जनसाधारण को सूचित किया जाता है कि यदि किसी को उपरोक्त मामला में कोई उजर/एतराज हो तो वह इस न्यायालय में दिनांक 12-10-2022 को प्रातः 10.00 बजे असातन या वकालतन हाजिर आकर अपना उजर/एतराज पेश कर सकता है अन्यथा गैरहाजिरी की सूरत में एकतरफा कार्यवाही अमल में लाई जाएगी एवं प्रार्थिया के आवेदन-पत्र का नियमानुसार निपटारा कर दिया जाएगा।

आज दिनांक 12 सितम्बर, 2022 को हमारे हस्ताक्षर व मोहर अदालत द्वारा जारी किया गया।

मोहर।

हस्ताक्षरित/—
नायब तहसीलदार एवं सहायक समाहर्ता द्वितीय श्रेणी,
तहसील सन्धोल, जिला मण्डी (हि० प्र०)।

**In the Court of Marriage Officer-cum-Sub-Divisional Magistrate, Sundernagar,
District Mandi (H. P.)**

In the matter of :

1. Sanjay Kumar s/o Sh. Garja Ram, r/o Village Behna, P.O. Nalag, Tehsil Sundernagar, District Mandi (H.P.)

2. Anjana Kumari d/o Sh. Bishan Dass, r/o Village Satoh, Post Office Rajgarh, Tehsil Sundernagar, District Mandi (H.P.)
.. Applicants.

Versus

General Public

.. Respondent.

Subject.—Application for the registration of marriage under section 15 of Special Marriage Act.

Sanjay Kumar and Anjana Kumari applicants have filed an application alongwith affidavits in the court of undersigned under section 15 of Special Marriage Act, 1954 that they have solemnized their marriage on 22-06-2022 according to Hindu rites and ceremonies and they are living together as husband and wife since then. Hence, their marriage may be registered under Special Marriage Act, 1954.

Therefore, the general public is hereby informed through this notice that any person who has any objection regarding this marriage, can file the objection personally or in writing before this court on or before 27-10-2022. After that no objection will be entertained and marriage will be registered.

Issued today on 12-09-2022 under my hand and seal of the court.

Seal.

Sd/-

*Marriage Officer-cum-Sub-Divisional Magistrate,
Sundernagar, District Mandi (H.P.).*

**In the Court of Marriage Officer-cum-Sub-Divisional Magistrate, Sundernagar,
District Mandi (H. P.)**

In the matter of :

1. Saroop Lal s/o Sh. Bhagat Ram, r/o Qtr. No. S-2/134/13, BBMB Colony Sundernagar ,
Tehsil Sundernagar, District Mandi (H.P.)

2. Arti d/o Sh. Ghethal Ram, r/o H. No. 208/4, V.P.O. Bhojpur, Tehsil Sundernagar,
District Mandi (H.P.) . . *Applicants.*

Versus

General Public

. . *Respondent.*

Subject.—Application for the registration of marriage under section 15 of Special Marriage Act.

Saroop and Arti applicants have filed an application alongwith affidavits in the court of undersigned under section 15 of Special Marriage Act, 1954 that they have solemnized their marriage on 23-06-2022 according to Hindu rites and ceremonies and they are living together as husband and wife since then. Hence, their marriage may be registered under Special Marriage Act, 1954.

Therefore, the general public is hereby informed through this notice that any person who has any objection regarding this marriage, can file the objection personally or in writing before this court on or before 27-10-2022. After that no objection will be entertained and marriage will be registered.

Issued today on 9-09-2022 under my hand and seal of the court.

Seal.

Sd/-

*Marriage Officer-cum-Sub-Divisional Magistrate,
Sundernagar, District Mandi (H.P.).*

**In the Court of Sh. Nishant Kumar (H.P.A.S.), Sub- Divisional Magistrate , Shimla (Rural),
District Shimla (H.P.)**

1. Sh. Ram Chand s/o Sh. Mehar Chand, r/o Village Kanohar Nala, P.O. Kufri, Tehsil Shimla (Rural) District Shimla, Himachal Pradesh.

2. Ms. Usha Devi d/o Sh. Nand Lal, r/o Village Nehwat, P.O. Pahal, Tehsil Sunni, District Shimla, Himachal Pradesh

Versus

General Public

Subject.—Registration of Marriage under section 8(4) of the Himachal Pradesh Registration of Marriage Act, 1996.

Sh. Ram Chand s/o Sh. Mehar Chand, r/o Village Kanohar Nala, P.O. Kufri, Tehsil Shimla (Rural) District Shimla, Himachal Pradesh and Ms. Usha Devi d/o Sh. Nand Lal, r/o Village Nehwat, P.O. Pahal, Tehsil Sunni, District Shimla, Himachal Pradesh have filed an application alongwith affidavits in the court of the undersigned stating therein that they have solemnized their marriage on 28-11-2019 but the marriage has not been found entered in the record of concerned Registrar of Marriages, Gram Panchayat Shawah Kufri, Tehsil Shimla (Rural) District Shimla.

Therefore, objections are hereby invited from the General Public through this notice, that if anyone has any objection regarding registration of this marriage, they can file their objections personally or in writing before the court of undersigned on or before 25-09-2022. After that no objection shall be entertained and marriage will be registered accordingly.

Issued under my hand and seal of the court today on 24th August, 2022.

Seal.

NISHANT KUMAR (H.P.A.S.),
Marriage Officer-cum-Sub-Divisional Magistrate,
Shimla (Rural).

**In the Court of Sh. Nishant Kumar (H.P.A.S.), Sub- Divisional Magistrate , Shimla (Rural),
District Shimla (H.P.)**

1. Sh. Kapil s/o Sh. Pawan Kumar, r/o Top Floor, Ankur Bhawan, Kachighati Shimla, Tehsil & District Shimla, Himachal Pradesh.

2. Ms. Neha d/o Sh. Gopi Kishan, r/o Ward No. 01, Railway Road, Anaz Mandi Gate, Mahendergarh, Haryana India.

Versus

General Public

Subject.—Registration of Marriage under section 8(4) of the Himachal Pradesh Registration of Marriage Act, 1996.

Sh. Kapil s/o Sh. Pawan Kumar, r/o Top Floor, Ankur Bhawan, Kachighati Shimla, Tehsil & District Shimla, Himachal Pradesh and Ms. Neha d/o Sh. Gopi Kishan, r/o Ward No. 01, Railway Road, Anaz Mandi Gate, Mahendergarh, Haryana India have filed an application alongwith affidavits in the court of the undersigned stating therein that they have solemnized their marriage on 26-04-2021 but the marriage has not been found entered in the record of concerned Registrar of Marriages Municipal Corporation Shimla, District Shimla.

Therefore, objections are hereby invited from the General Public through this notice, that if anyone has any objection regarding registration of this marriage, they can file their objections personally or in writing before the court of undersigned on or before 14-10-2022. After that no objection shall be entertained and marriage will be registered accordingly.

Issued under my hand and seal of the court today on 12th September, 2022.

Seal.

NISHANT KUMAR (H.P.A.S.),
Marriage Officer-cum-Sub-Divisional Magistrate,
Shimla (Rural).

**In the Court of Sh. Nishant Kumar (H.P.A.S.), sub- Divisional Magistrate , Shimla (Rural),
District Shimla (H.P.)**

1. Sh. Pawan Kumar Sharma s/o Sh. Kuldeep Prakash Sharma, r/o Sh. Ram Bhawan, Bhagwati Nagar Jhanjehri, Rajhana, Tehsil & District Shimla, Himachal Pradesh.

2. Ms. Tim Pong Saran d/o Sh. Hari Saran, r/o Vill. Bakharonda, Seri Mandi, Tehsil Karsog, District Mandi (H.P.)

Versus

General Public

Subject.—Registration of Marriage under section 8(4) of the Himachal Pradesh Registration of Marriage Act, 1996.

Sh. Pawan Kumar Sharma s/o Sh. Kuldeep Prakash Sharma r/o Sh. Ram Bhawan, Bhagwati Nagar Jhanjehri, Rajhana, Tehsil & District Shimla H.P. and Ms. Tim Pong Saran d/o Sh. Hari Saran r/o Vill. Bakharonda, Seri Mandi, Tehsil Karsog, Distt. Mandi H.P. India have filed an application alongwith affidavits in the court of the undersigned stating therein that they have solemnized their marriage on 14-02-2020 but the marriage has not been found entered in the records of concerned Registrar of Marriages Municipal Corporation Shimla, District Shimla.

Therefore, objections are hereby invited from the General Public through this notice, that if anyone has any objection regarding registration of this marriage, they can file their objections personally or in writing before the court of undersigned on or before 14-10-2022. After that no objection shall be entertained and marriage will be registered accordingly.

Issued under my hand and seal of the court today on 12th September, 2022.

Seal.

NISHANT KUMAR (H.P.A.S.),
Marriage Officer-cum-Sub-Divisional Magistrate,
Shimla (Rural).

**In the Court of Shri Nishant Kumar, Sub-Divisional Magistrate, Shimla (R),
District Shimla (H. P.)**

Pravinder Kaur d/o Sh. Gurbakash Singh, r/o House No. 11388, Street No. 6, Ward No. 6, New Subhash Nagar, Ludhiana (P.B.)

Versus

General Public

. . Respondent.

Whereas Pravinder Kaur d/o Sh. Gurbakash Singh, r/o House No. 11388, Street No. 6, Ward No. 6, New Subhash Nagar, Ludhiana (P.B.) has filed an application alongwith affidavit in the court of undersigned under section 13(3) of the Birth & Death Registration Act, 1969 to enter date of birth of herself named— Pravinder Kaur d/o Sh. Gurbakash Singh, r/o House No. 11388, Street No. 6, Ward No. 6, New Subhash Nagar, Ludhiana (P.B.) and birth place is Jutogh, Totu, Shimla (H.P.) in the record of Registrar Birth and Death, Municipal Corporation Shimla (H.P.).

Sl. No.	Name of the family member	Relation	Date of Birth
1.	Smt. Parvinder Kaur	Self	25-12-1972

Hence, this proclamation is issued to the general public if they have any objection/claim regarding entry of the name & date of birth of above named in the record of Registrar, Birth and Death, Municipal Corporation may file their claims/objections in the court on or before one month of publication of this notice in Govt. Gazette, failing which necessary orders will be passed.

Issued today on 05-09-2022 under my signature and seal of the court.

Seal.

Sd/-
Sub-Divisional Magistrate,
Shimla (R), District Shimla (H.P.).

In the Court of Executive Magistrate, Chopal, District Shimla (H. P.)

Sh. Sushant s/o Sh. Surat Ram, r/o Village Batewari, P.O. Dewat, Tehsil Chopal, District Shimla (H.P.)

Versus

General Public Tehsil Chopal

Application under section 13 (3) of Birth and Death Registration Act, 1969.

Whereas, Sh. Sushant s/o Sh. Surat Ram, r/o Village Batewari, P.O. Dewat, Tehsil Chopal, District Shimla (H.P.) has preferred an application to undersigned for registration of name of his/her son/daughter namely Divija Sharma whose date of birth is 07-04-2016 in the Gram Panchayat Dewat, Tehsil Chopal, District Shimla (H.P.).

Therefore by this proclamation, the General Public is hereby informed that any person having any objection for entry as to date of birth mentioned above, may submit his/her objection in writing in this court on or before 13-10-2022 failing which no objection will be entertained after expiry of date and will be decided accordingly.

Given under my hand and the seal of court of this 13-09-2022.

Seal.

Sd/-

Executive Magistrate,
Chopal, District Shimla (H.P.).

ब अदालत जगपाल सिंह, कार्यकारी दण्डाधिकारी, नेरुवा, जिला शिमला (हि0 प्र0)

श्री समीर हुसैन पुत्र मोहम्मद नजीर, निवासी ग्राम नेरुवा, डाकघर नेरुवा, तहसील नेरुवा, जिला शिमला (हि0 प्र0) प्रार्थी।

बनाम

आम जनता

प्रत्यार्थी।

विषय.—प्रार्थी क॰ जन्म तिथि ग्राम पंचायत नेरुवा के जन्म पंजीकरण रजिस्टर में दर्ज करवाए जाने बारे कि अधीन धारा (13)3 जन्म एवं मृत्यु पंजीकरण अधिनियम 1969 के अन्तर्गत जन्म पंजीकरण करने बारे।

प्रार्थी श्री समीर हुसैन पुत्र मोहम्मद नजीर, निवासी ग्राम नेरुवा, डाकघर नेरुवा, तहसील नेरुवा ने अधोहस्ताक्षरी के न्यायालय में एक आवेदन पत्र प्रस्तुत किया है कि उसका जन्म पंजीकरण ग्राम पंचायत के जन्म पंजीकरण रजिस्टर में दर्ज नहीं करवाया है, तथा प्रार्थी अब अपना पंजीकरण ग्राम पंचायत नेरुवा के जन्म पंजीकरण रजिस्टर में दर्ज करवाना चाहता है जोकि इस प्रकार है।

क्रम संख्या	नाम	सम्बन्ध	जन्म तारीख
1	समीर हुसैन	स्वयं	03-10-2000

अतः आम जनता को बजरिया इश्तहार सूचित किया जाता है कि किसी व्यक्ति को उपरोक्त जन्म पंजीकरण बारे कोई आपत्ति हो तो इस इश्तहार के प्रकाशन से 30 दिन के भीतर किसी भी कार्य दिवस पर प्रातः 10 बजे से सायं 5 बजे तक असातन या वकालतन हाजिर अदालत आकर अपनी आपत्ति प्रस्तुत करें अन्यथा आवेदन-पत्र पर आवश्यक आदेश पारित करके सचिव ग्राम पंचायत नेरुवा को आगामी कार्यान्वयन हेतु भेज दिया जायेगा।

आज तारीख 14-09-2022 को मेरे हस्ताक्षर व मोहर अदालत सहित जारी किया गया।

मोहर।

हस्ताक्षरित/—
(जगपाल सिंह),
कार्यकारी दण्डाधिकारी,
नेरुवा, जिला शिमला (हि0 प्र0)।

ब अदालत नायब तहसीलदार एवं सहायक समाहर्ता द्वितीय वर्ग, हरोली, जिला ऊना (हि0प्र0)

इश्तहार मुश्त्री मुनादी जेर धारा-23 भू-राजस्व अधिनियम, 1954

दरखास्त बमुराद दुरुस्ती राजस्व रिकार्ड महाल पालकवाह की जमाबन्दी 1997-98 में श्रीमती मंगत देवी पुत्री मुख्तयार सिंह के बजाए शकुन्तला देवी पुत्री मुख्तयार सिंह दर्ज करने बारे।

बनाम

आम जनता

उपरोक्त मुकद्दमा उनवान वाला में प्रार्थिया शकुन्तला देवी पुत्री मुख्तयार सिंह, वासी पालकवाह, तहसील हरोली, जिला ऊना ने प्रार्थना-पत्र प्रस्तुत करके निवेदन किया है कि उसका नाम जमाबन्दी 1997-98 में श्रीमती मंगत देवी पुत्री मुख्तयार सिंह गलत चल रहा है जबकि उसका सही नाम श्रीमती शकुन्तला देवी पुत्री मुख्तयार सिंह है। अतः सर्वसाधारण को इस इश्तहार द्वारा सूचित किया जाता है कि अगर किसी भी व्यक्ति को उक्त नाम की दुरुस्ती बारे कोई एतराज हो तो वह मुकद्दमा की पैरवी हेतु असालतन या वकालतन इस न्यायालय में दिनांक 28-09-2022 को प्रातः 10.00 बजे हाजिर आवें हाजिर न आने की सूरत में उनके खिलाफ एकतरफा कार्यवाही अमल में लाई जाकर मुकद्दमा का निपटारा/फैसला कर दिया जायेगा।

आज दिनांक 20-08-2022 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी हुआ।

मोहर।

हस्ताक्षरित/—

नायब तहसीलदार एवं सहायक समाहर्ता द्वितीय वर्ग,
हरोली, जिला ऊना (हि0प्र0)।

ब अदालत नायब तहसीलदार एवं सहायक समाहर्ता द्वितीय वर्ग, हरोली, जिला ऊना (हि0प्र0)

इश्तहार मुश्त्री मुनादी जेर धारा-23 भू-राजस्व अधिनियम, 1954

दरखास्त बमुराद दुरुस्ती राजस्व रिकार्ड महाल रोडा वालीवाल की जमाबन्दी 2017-18 में देव सिंह पुत्र गुरदिता पुत्र मनिया की बजाए गुरदेव सिंह पुत्र गुरदिता पुत्र मनिया दर्ज करने बारे।

बनाम

आम जनता

उपरोक्त मुकद्दमा उनवान वाला में प्रार्थी गुरदेव सिंह पुत्र गुरदिता पुत्र मनिया वासी हरोली रोडा वालीवाल, तहसील हरोली, जिला ऊना ने प्रार्थना-पत्र प्रस्तुत करके निवेदन किया है कि उसका नाम जमाबन्दी साल 2017-218 में देव सिंह पुत्र गुरदिता पुत्र मनिया गलत चल रहा है जबकि उसका सही नाम गुरदेव सिंह पुत्र गुरदिता पुत्र मनिया है अतः सर्वसाधारण को इस इश्तहार द्वारा सूचित किया जाता है कि अगर किसी भी व्यक्ति को उक्त नाम की दुरुस्ती बारे कोई एतराज हो तो वह मुकद्दमा की पैरवी हेतु असालतन या वकालतन इस न्यायालय में दिनांक 29-09-2022 को प्रातः 10.00 बजे हाजिर आवें। न आने की सूरत उनके खिलाफ एकतरफा कार्यवाही अमल में लाई जाकर मुकद्दमा का निपटारा/फैसला कर दिया जायेगा।

आज दिनांक 09-09-2022 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी हुआ।

मोहर।

हस्ताक्षरित/—
नायब तहसीलदार एवं सहायक समाहर्ता द्वितीय वर्ग,
हरोली, जिला ऊना (हि0प्र0)।

ब अदालत नायब तहसीलदार एवं सहायक समाहर्ता द्वितीय वर्ग, हरोली, जिला ऊना (हि0प्र0)

इश्तहार मुश्त्री मुनादी जेर धारा-23 भू-राजस्व अधिनियम, 1954

दरखास्त बमुराद दुरुस्ती राजस्व रिकार्ड महाल हरोली प्रथम की जमाबन्दी 2016-17 में सुरेश कुमारी पुत्री श्रीमती चैचला देवी पत्नी स्व0 श्री विशन दास की बजाए सरोज वाला पुत्री श्रीमती चैचला देवी पत्नी स्व0 श्री विशन दास दर्ज करने बारे।

बनाम

आम जनता

उपरोक्त मुकद्दमा उनवान वाला में प्रार्थिया सरोज वाला पुत्री श्रीमती चैचला देवी पत्नी स्व0 श्री विशन दास, वासी हरोली, तहसील हरोली, जिला ऊना ने प्रार्थना-पत्र प्रस्तुत करके निवेदन किया है कि उसका नाम जमाबन्दी साल 2016-17 में सुरेश कुमारी पुत्री श्रीमती चैचला देवी पत्नी स्व0 श्री विशन दास गलत चल रहा है जबकी उसका सही नाम सरोज वाला पुत्री श्रीमती चैचला देवी पत्नी स्व0 श्री विशन दास है। अतः सर्वसाधारण को इस इश्तहार द्वारा सूचित किया जाता है कि अगर किसी भी व्यक्ति को उक्त नाम की दुरुस्ती बारे कोई एतराज हो तो वह मुकद्दमा की पैरवी हेतु असालतन या वकालतन इस न्यायालय में दिनांक 29-09-2022 को प्रातः 10.00 बजे हाजिर आयें हाजिर न आने की सूरत में उनके खिलाफ एकतरफा कार्यवाही अमल में लाई जाकर मुकद्दमा का निपटारा/फैसला कर दिया जायेगा।

आज दिनांक 27-08-2022 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी हुआ।

मोहर।

हस्ताक्षरित/—
नायब तहसीलदार एवं सहायक समाहर्ता द्वितीय वर्ग,
हरोली, जिला ऊना (हि0प्र0)।

**In the Court of Marriage Officer-cum- Sub-Divisional Magistrate, Bangana, District Una,
Himachal Pradesh**

In the matter of :

1. Shri Jasvir Singh aged 29 years s/o Shri Roshan Lal, r/o Village Basatar, P.O. Chamari, Tehsil Bangana, District Una, Himachal Pradesh.

2. Pratibha aged 18 years d/o Sh. Ramesh Kumar, r/o Village Jarni, P.O. & Tehsil Kandaghat, District Solan (H.P.)
.. Applicants.

Versus

General Public

Subject .—Notice of Intended Marriage.

Shri Jasvir Singh aged 29 years s/o Shri Roshan Lal, r/o Village Basatar, P.O. Chamiari, Tehsil Bangana, District Una, Himachal Pradesh and Pratibha aged 18 years d/o Sh. Ramesh Kumar, r/o Village Jarni, P.O. & Tehsil Kandaghat, District Solan (H.P.) through Counsel Sh. Jasbir Thakur have filed an application in the court of undersigned under section 5 of the Specipal Marriage Act, 1954 in which they stated that they intend to solemnized their marriage within three month of calendar.

Therefore, the general public is hereby informed through this notice that if any person who has any objection regarding this marriage can file the objection personally or in writing before this court on or before 06-10-2022. The objection received after 06-10-2022 will not entertained and marriage will be registered accordingly.

Issued today on 25th August, 2022 under my hand and seal of the court.

Seal.

Sd/-

*Marriage Officer-cum-Sub-Divisional Magistrate,
Bangana , District Una (H.P.).*

ब अदालत कार्यकारी दण्डाधिकारी, घनारी, तहसील घनारी, जिला ऊना (हि0 प्र0)

विवाह पंजीकरण—घनारी / 2022

श्री नीरज कुमार पुत्र श्री अशोक कुमार, निवासी गांव व डा0 चलेट, तहसील घनारी, जिला ऊना (हि0 प्र0) प्रार्थी।

बनाम

आम जनता

विषय : प्रार्थना—पत्र अधीन धारा 8(4) विवाह पंजीकरण अधिनियम, 1996.

श्री नीरज कुमार पुत्र श्री अशोक कुमार, निवासी गांव व डा0 चलेट, तहसील घनारी, जिला ऊना (हि0 प्र0) ने इस न्यायालय में प्रार्थना—पत्र मय शपथ पत्र पेश किया है कि उसकी शादी श्रीमती शालिनी कुमारी पुत्री श्री महिन्दर सिंह, निवासी गांव पंगा, मोहल्ला रामपुर, डा0, तहसील व जिला ऊना (हि0 प्र0) के साथ दिनांक 30-10-2020 को मुताबिक हिन्दू रीति रिवाज हुई थी परन्तु अज्ञानतावश शादी का पंजीकरण ग्राम पंचायत चलेट के अभिलेख में नहीं करवाया है। प्रार्थी ने अपनी शादी की पुष्टि बारे शपथ पत्र व दोनों के आधार कार्ड व प्रधान/सचिव ग्राम/नगर पंचायत चलेट द्वारा जारी प्रमाण—पत्र प्रार्थना—पत्र के साथ दायर किए हैं। रिपोर्ट सम्बन्धित स्थानीय पंजीकार विवाह पंजीकरण/सचिव ग्राम पंचायत/सचिव नगर पंचायत के अनुसार उक्त शादी सम्बन्धित ग्राम पंचायत/नगर पंचायत में दर्ज न है। अब प्रार्थी अपनी शादी पंजीकृत करवाना चाहता है।

अतः आम जनता को इस इशतहार/मुश्त्री मुनादी द्वारा सूचित किया जाता है कि यदि किसी भी व्यक्ति को उक्त शादी दर्ज करने बारे कोई उजर या एतराज हो तो वह दिनांक 06-10-2022 को दोपहर

2.00 बजे या इससे पूर्व असालतन या वकालतन हाजर अदालत होकर पेश करें। गैर हाजिरी की सूरत में एक तरफा कार्यवाही करके नियमानुसार सम्बन्धित ग्राम/नगर पंचायत को शादी दर्ज करने का आदेश जारी कर दिया जाएगा।

आज दिनांक 06-08-2022 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी हुआ।

मोहर।

हस्ताक्षरित/—
कार्यकारी दण्डाधिकारी,
घनारी, जिला ऊना (हि0 प्र0)।

